Supreme Court, U.S.
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NO.

IN THE SUPREME COURT OF THE UNITED STATES

SABEL H. BBELA,
Petitioner,
v.
MICROSOFT CORPORATION,
Respondent

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under Title VII, a plaintiff seeking to bring suit for employment discrimination must first file a charge of discrimination within the limitation time the unlawful employment practice occurred. Where an employer adopts an employment practice that discriminates against African Americans in violation of Title VII's disparate impact/treatment provisions; is the way the lower courts judges use McDonnell Douglas burden-shifting formula any longer an effective tool to combat the new more sophisticated, mostly covert discrimination practices of employers?

Where it has become common that judges determine whether a plaintiff has not stated a prima facie case consequently dismissing proportionally majority of cases at summary judgment.

Where the employer implements and benefits from employee's products, the credibility decision of whether employee's performance was adequate is best not left for Trier of fact at trial.

Where employee represents themselves in Pro-se, their testimony, if not adequately rebutted by employer, should not carry equal weight to employer's solicited testimony of its current employees, in essence not making it a fair and just fight at summary judgment.

PARTIES TO THE PROCEEDINGS

Sabel H. Bbela ("Bbela") is the petitioner to this Court, and was the plaintiff in the King County Superior Court of The State of Washington ("Superior Court"), appellant in the Court of Appeals Division I ("Court of Appeals", "Appeals Court"), and petitioner in The Supreme Court of Washington. Bbela is a man of Black African descent who is over 50 years of age. Bbela has a Bachelor's Degree in Mathematics and Computer Science. Bbela's resume of over 20 years experience includes working for large corporations like Bank of America and currently employed with the State of Washington Department of Social & Health Services (DSHS).

The respondent is Microsoft Corporation, which was the defendant and respondent in the courts above;

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Petitioner Sabel H. Bbela ("Bbela") respectfully petition for a writ of certiorari to review an order denying a petition for review entered in the Supreme Court of The State of Washington in this case.

OPINIONS BELOW

A mandate entered in The Court Of Appeals of The State of Washington Division I ("Court of Appeals", "Appeals Court"), is attached at App. 1a-2a.
An order entered in the Court of Appeals, denying a motion for reconsideration, is attached at App. 2a.
An unpublished opinion that was entered in the Court of Appeals, is attached at App. 3a-14a.
Order entered in The Superior Court of The State of Washington In and For The County of King ("Superior Court"), is attached at App. 1b-3b.
Order entered in the Superior Court, is attached at App. 4b-6b.
Order entered in the Superior Court, is attached at App. 7b.
Order entered in the Superior Court, is attached at App. 8b-10b.
A letter entered by Supreme Court Deputy Clerk, confirming that the Court's decision on the petition for review is not subject to reconsideration, is attached at App. 1c-2c.
An order entered in The Supreme Court of Washington State, denying a petition for review is attached at App. 1d.

JURISDICTION

On October 19, 2007 defendant Microsoft filed a motion for summary judgment in the Superior Court. On November 04, 2007 Plaintiff filed a timely motion for continuance for further discovery and despite Plaintiff's testimony and submitted company emails evidence the Superior Court entered an order granting defendant summary judgment on November 16, 2007.[1]

On January 11, 2008 Plaintiff provided more testimony and company emails evidence and filed a motion to dismiss summary judgment. On January 25, 2008 the Superior Court denied Plaintiff motion.

On February 4, 2008 Plaintiff provided more testimony and company emails evidence filing a motion to reconsider and to alter judgment. On February 28, 2008 the Superior Court ordered defendant to provide more evidence and took the matter under advisement.

On July 18, 2008 Plaintiff provided more testimony and company emails evidence filing a motion to dismiss summary judgment. Final order was entered on July 25, 2008 in The Superior Court granting defendant Summary judgment and

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[1] A plaintiff 's prima facie case of discrimination (as defined in *McDonnell Douglas Corp* v. *Green*, 411 U. S. 792, 802, and subsequent decisions), combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, may be adequate to sustain a finding of liability for intentional discrimination under the ADEA.

dismissing Plaintiff's action in its entirety with prejudice.

On December 4, 2008 Plaintiff appealed decision of the Superior Court in the Appeals Court. The Appeals Court rejected Plaintiff's appeal and an unpublished opinion was entered on May 4, 2009.

On May 22, 2009 Plaintiff entered a Motion to Re-Consider in the Appeals Court providing more testimony and highlighting documented evidence on record. Order was entered on July 15, 2009 Appeals Court, denying a motion for reconsideration. [2]

On August 14, 2009 Plaintiff entered a Petition for Review in the Appeals Court. An order was entered on January 5, 2010 in The Supreme Court of Washington State, denying a petition for review. A letter was entered on January 15, 2010 by Supreme Court Deputy Clerk, confirming that the Court's decision on the petition for review is not subject to reconsideration. The Court of Appeals entered a mandate on March 5, 2010.

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[2] Even though in this case, Reeves established a prima facie case and made a substantial showing that respondent's legitimate, nondiscriminatory explanation, *i. e.*, his shoddy recordkeeping, was false. He offered evidence showing that he had properly maintained the attendance records in question and that cast doubt on whether he was responsible for any failure to discipline late and absent employees. In holding that the evidence was insufficient to sustain the jury's verdict, the Fifth Circuit ignored this evidence, as well as the evidence supporting Reeves' prima facie case, and instead confined its review of the evidence favoring Reeves to that showing that Chesnut had directed derogatory, age-based comments at Reeves . [Reeves v. Sanderson Plumbing Products Inc., No. 99-536 March 21, 2000--Decided June 2000] which is similar to the plaintiff's evidence in this case

STATUTORY PROVISIONS INVOLVED

Section 703(a) of Title VII of the Civil Rights Act of 1964 provides:

> (a) It shall be an unlawful employment practice for an employer –
>
> (1) To fail or refuse to hire or to discharge any individual ... because of such individual's race, color, religion, sex, or national origin; or
>
> (2) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.
>
> *42 U.S.C. § 2000e-2(a).*

Section 703(k)(1)(A) of Title VII provides:

> (k) Burden of proof in disparate impact cases
>
> (1) (A) An unlawful employment practice based on disparate impact is established under this subchapter only if –
>
> (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity....

STATEMENT OF THE CASE

On about April 2000, Bbela started doing work at Microsoft to perform software engineering work as a contract Applications Developer reporting to Mr. Tom Retan ("Tom"). Bbela's initial assignment was to reengineer the company's decision support/finance reporting application entitled "Calypso". Bbela was the only developer at Microsoft with FOCUS programming skills to perform this task. Rich Stephenson ("Stephenson"), a white Applications Developer was added to the Calypso team to assist Bbela.

In about late 2000 and early 2001 Calypso project changed managers and Bbela was now asked to report to Mr. John Williams ("John"). Because Bbela was performing exceptionally well, on about April 2001, Microsoft offered Bbela a full time position joining the Microsoft Cost Center 17820-FIT ENG US team. The team's objective was to deliver Microsoft-compatible business applications for use by Microsoft's U.S. Financial Operations and Information Technology (or "FOIT") group and its internal clients at Microsoft.

On about late 2001 a new program manager was hired for Calypso and Bbela was asked to now report to Mr. Cory Purkis ("Cory"). Another non black programmer, Mukesh was added to the Calypso team to assist Bbela in the re-engineering effort. By his testimony and submitted company emails, Bbela had a difficult working relationship with Cory. The defendant has not offered any reasonable

explanation as to why Bbela's previous managers; Tom and John were abruptly replaced by Cory.

On about early 2003, the Calypso team was reorganized yet again; thereby causing all three of the Calypso Applications Developers to report to manager Frank Schneider ("Frank"). On about September 2003, Microsoft issued another Calypso release, which marked the completion of the reengineering effort. Due to Bbela's successful support of Calypso, Microsoft saved approximately $250,000 in annual maintenance contract.

In evidence is a company email from Bbela to Frank, stating that Bbela enjoyed working for Frank. In his annual performance review Bbela's performance, Frank reported that Bbela had acquired significant skill set to continue as successful Business Applications Developer career at Microsoft. While reporting to Frank, Bbela and Stephenson enrolled in a C# Programming class charged to Microsoft Cost Center 17820-FIT ENG US.

On about late 2003, the Calypso team was reorganized yet again. Mukesh and Rich remained supporting Calypso and reporting to a different manager Kelly Pranghofer ("Kelly"). On about June 22, 2004, in the Microsoft Annual Performance Review of Stephenson; Stephenson confirms that he was working on the Calypso Application that Bbela led in the re-engineering effort.

Bbela was removed from the Calypso team and forced to join a newly formed group called U.S. FOIT Operations Team (aka "U.S. FOIT Ops" or

"Operations Team") reporting to Scott A. Roberts ("Roberts"). This new team was still under the Microsoft Cost Center 17820-FIT ENG US. The team required two technical developers to write technical code as necessary to address applications performance issues and build support-related tools. These roles were initially filled by one senior level development lead Phil Black ("Black") and Bbela.

In this new group, in addition to technical programming, Bbela was assigned rotating 24/7 support role which required him to carry two pagers when on call. Bbela informed Roberts that, because of his over two (2) decades of training as a business applications developer, he was not well suited for the new assignments and hence the reason Bbela resisted transfer to the U.S. FOIT Ops team. On about December, 2003 Bbela notified Frank, his former manager that he was concerned about being assigned to Roberts's team.

By January, 2004 Bbela introduced into Roberts's team an applications monitoring tool called MOM/2005. Roberts acknowledged Bbela's findings, but assigned the task of installing the demonstration to another younger, non-African employee.

Later in January 2004, Bbela introduced yet another applications monitoring tool called SiteScope. Roberts rejected that tool as "cost prohibitive" although some divisions of Microsoft were using that same tool.

On about March 2004, Bbela completed work on a project entitled MARS Status Page. Microsoft

management announced that the project included more features than had been requested and that the project was available to users a week ahead of schedule.

On about April 2004, Bbela was denied the opportunity to interview for a position outside Roberts's team. Another applications developer who is non-African was allowed by Roberts to train in C# programming and interview outside Roberts's team. Also on about April 2004, Bbela was denied to attend a training session that two other non-African employees in the same Microsoft Cost Center 17820-FIT ENG US, were able to attend.[3]

On June 2004, Roberts announced that Bbela would have to meet certain conditions with regard to the Business Applications Monitoring (BAM), to retain his employment with Microsoft. Bbela notified Taunya Hilfrink ("Hilfrink"), Microsoft IT Human Resources Manager, that he was being subjected to adverse working conditions. Bbela also notified Jennifer Harden and Tracy Turman that he was being subjected to adverse working conditions.

On about early July 2004, Bbela completed the conditions required of him by Roberts to retain his employment. On July 14, 2004 Bbela announced the completion and installation of the BAM tool.

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[3] In St. Mary's Honor Center v. Hicks, 509 U. S. 502, 511, the Court stated that, because the factfinder's disbelief of the reasons put forward by the defendant, together with the elements of the prima facie case, may suffice to show intentional discrimination, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination.

Despite the successful completion of the BAM tool, on July 15, 2004, Roberts fired Bbela from his position at Microsoft.[4] Bbela was stripped of his badge and escorted by security guard through the Microsoft building in front of his colleagues and co-workers.

At the time of his firing, Microsoft told Bbela that, although he had worked for Microsoft for about four years, he was not entitled to re-employment as a contractor. When potential employers contacted Microsoft about Bbela's employment history, they were told he was not eligible for re-employment, thereby damaging his ability to successfully obtain employment.

In all Washington State courts proceedings, and for all these facts stated above, Plaintiff entered in evidence; Bbela's deposition, several declared testimonies, and Microsoft company emails acquired through discovery.[5]

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[4] *Wright* v. *West*, 505 U. S. 277, 296. Moreover, once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision.

[5] Thus, the court must review all of the evidence in the record, cf., *e. g.*, *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U. S. 574, 587, drawing all reasonable inferences in favor of the nonmoving party, but making no credibility determinations or weighing any evidence, *e. g.*, *Lytle* v. *Household Mfg., Inc.*, 494 U. S. 545, 554–555.

The Statutory Framework.

Title VII of the Civil Rights Act of 1964 makes it an "unlawful employment practice" for an employer:

> (1) to fail or refuse to hire or to discharge any individual...because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a). Both "disparate treatment" claims (which challenge intentionally discriminatory employment practices) and "disparate impact" claims (which challenge employment practices that have an adverse effect on protected classes regardless of intent) are cognizable under Title VII. See *Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971)* ("[Title VII] proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.");

Disparate Treatment Title VII prohibits employers from treating applicants or employees differently because of their membership in a protected class. The central issue is whether the employer's actions were motivated by discriminatory intent, which may be proved by either direct or circumstantial evidence.

(1) Under the direct method, a plaintiff attempts to establish that membership in the protected class was a motivating factor in the adverse job action. Plaintiff may offer direct evidence, such as that the defendant admitted that it was motivated by discriminatory intent or that it acted pursuant to a policy that is discriminatory on its face. In most cases, direct evidence of discrimination is not available, given that most employers do not openly admit that they discriminate.

a. A plaintiff may also proceed under the direct method by offering any of the following three types of circumstantial evidence. The first type consists of "suspicious timing[6], ambiguous statements oral or written, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of discriminatory intent might be drawn." *Troupe v. May Department Stores, 20 F.3d 734, 736 (7th Cir. 1994).* The second type is evidence that other, similarly-situated employees not in a protected class received systematically better treatment. *Marshall v. American Hospital Assoc., 157 F.3d 520 (7th Cir. 1998).* The third type is evidence that the plaintiff was qualified for the job, a

[6] At the same time that Bbela was elected to VP of Blacks at Microsoft (BAM), his firing manager Roberts assigned him to work on a project named Business Application Monitoring (BAM)

person not in the protected class got the job, and the employer's stated reason for its decision is unworthy of belief. This third type of circumstantial evidence is substantially the same as the evidence required by the McDonnell Douglas method.

(2) Direct Method – Burden Shifting; in the majority of cases, the plaintiff lacks direct evidence of discrimination and must prove discriminatory intent indirectly by inference. The Supreme Court has created one structure for analyzing these types of cases, commonly known as the McDonnell Douglas burden-shifting formula, which it first articulated in *McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)*, and later refined in *Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981)*, and *St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993)*. The analysis is as follows; (1) the plaintiff must establish a prima facie case of discrimination; (2) the employer must then articulate, through admissible evidence, a legitimate, nondiscriminatory reason for its actions; (3) in order to prevail, the plaintiff must prove that the employer's stated reason is a pretext to hide discrimination. *McDonnell Douglass, 411 U.S. at 802-04; Burdine, 450 U.S. at 252-56.*

a. Prima facie case: The elements of the prima facie case are (i) the plaintiff is a

member of a protected class; (ii) the plaintiff was performing up to employer's legitimate expectations.

b. Employer's burden of production: In order to rebut the inference of discrimination, the employer must articulate, through admissible evidence, a legitimate, non-discriminatory reason for its actions. The employer's burden is one of production, not persuasion; the ultimate burden of persuasion always remains with the plaintiff. *Hicks, 509 U.S. at 511.*

c. Plaintiff's proof of pretext: Proof that the defendant's asserted reason is untrue permits, but does not require, a finding of discrimination. *St. Mary's Honor Center v. Hicks, 509 U.S. at 511; Anderson v. Baxter Healthcare Corp., 13 F. 3d 1120, 1123 (7th Cir. 1994).* The Seventh Circuit has held that plaintiff need not rebut all the defendant's reasons but must instead show that defendant's decision was based on a prohibited factor. *Monroe v. Children's Home Ass'n, 128 F.3d 591, 593 (7th Cir. 1997).* In addition to producing evidence of the falsity of the employer's proffered reason, the plaintiff may also attempt to prove pretext using comparative evidence;

    i. Plaintiff may prove pretext by offering evidence that similarly situated employees who are not in

the plaintiff's protected group were treated more favorably or did not receive the same adverse treatment.

ii. The concept of "similarly situated" is a common sense approach to facts, used by lawyers and nonlawyers alike, outside the courtroom. But when it is brought inside to prove a point in litigation, it all too often sinks into a swamp of unnecessary complexities and legalisms. We all learned as children that if someone reacts to a situation in a particular way one time, he/she will probably react the same way the next time. We therefore assume that if someone reacts differently to situations which look similar, he/she probably perceives a difference. If your boss treats one subordinate more favorably than another, you will assume he/she has some basis for his/her preference, even if you cannot figure out what it is. People usually have a reason for what they do. *Federal Equal Opportunity Reporter (Volume 93, Issue 18June 21, 1993).*

iii. The Seventh Circuit has issued differing opinions on whether the plaintiff's testimony about

> comparative employees is sufficient to raise factual issue and survive summary judgment. For example, in *Collier v. Budd Co., 66 F.3d 886 (7th Cir. 1995)*, the employer offered evidence that the younger employees who were retained were better qualified than the plaintiff. In his deposition, the plaintiff disputed that these employees were better qualified. The court said that the resulting credibility decision was best left for Trier of fact, and reversed a summary judgment ruling for employer. *Collier at 893.*

Proceedings in Superior Court.

Plaintiff Bbela entered testimony in the Superior Court, through several declarations. These declaration summaries Bbela's almost four (4) years at Microsoft. For about 3 ½ years beginning in 2001 there had been no performance issues recorded in Microsoft HR records for Bbela. Although Bbela was always focused on his assignments, Microsoft management kept changing his work environment, constantly changing his managers and supervisors. In that period Bbela was assigned to a total of Seven (7) different managers and supervisors. The following is a summary of submitted testimony and company emails evidence the Judge relied on in granting defendant summary judgment.

In part the Superior Court relied on testimony of Bbela's manager Scott A. Roberts ("Roberts"). Petitioner argues whether Roberts qualified to offer an objective opinion of Bbela's performance?

> "...This was my first opportunity to manage an organization, and I was excited about my new role...As a result, I was working with my direct reports for the first time." (App. 1e-2e)
>
> "...Because I do not have an applications development background, I do not have any significant knowledge of any computer programming language ..." (App. 3e)

In part the Superior Court relied on testimony of Bbela's Supervisor Ilya Buzytsky ("Ilya"). Ilya supervised Bbela for about six (6) weeks in the last 6 months of employment at Microsoft. Petitioner finds troubling that Microsoft's HR record of Ilya is false or at best it is misleading and his review of Bbela's performance should have been troubling to the Courts.

> "...I have been employed by Microsoft Corporation since April 2001. In approximately May 2004 I replaced Phil Black as lead applications developer on the U.S. Finance and Operations Information Technology Operations ("U.S. FOIT Ops") team." (App. 5e-6e)

On about January 11, 2008, the Plaintiff in its motion to dismiss summary judgment questioned Microsoft's HR records of Ilya. Plaintiff document

submitted in evidence is attached at (App. 6e). This document incorrectly shows that Bbela reported to Hya on November, 2002 and Microsoft has not offered an explanation of such error in its company records.

In part the Superior Court relied on testimony of Bbela's Supervisor Phil Black's ("Black"). From about February, 2004 to about April, 2004 Black reviewed and closely scrutinized Bbela's work at Microsoft. When compared to company emails on record, Black's declarations of October 17, 2007 and June 25, 2008 demonstrate inconsistencies, weaknesses, contradictions and incoherencies that a reasonable fact finder could find unworthy of credence.

Black's declared testimony is attached at (App. 7e-10e). To prove the point, Plaintiff, in its proceedings, submitted following company emails evidence to the Washington State Courts;
On about February 23-24, 2004 Black and Bbela exchange emails about delegation showing a positive exchange of ideas. (App. 11e – 13e)
On about March 02, 2004 Bbela and Black exchange emails about progress on MARS Status Page project showing a corporative work relationship. (App. 14e).
On Monday, March 08, 2004 at 6:11 PM Sally King ("King"), a Program Manager, sends emails to users with a copy to Black, and King writes;

> "...Sabel has dropped the new code to our Tier 3 Test, Andy Ho. It uses enhanced security and parameterized server name declaration, both of which are best practices we were

> hoping to implement. I'll give you an update as soon after the first Test pass. Our goal is to have it in production a week before you requested. We are shooting for UAT on 4/1 and Production on 4/6. I'll keep you posted on progress." (App. 16e)

Clearly according to the users of the MARS Status Page, this project was on track and Bbela included best practices and features above and beyond of what was asked of him.

On Friday, March 12, 2004 Bbela sent an email to his former team members Frank, Parvez and Rachel, with a copy to Black. Bbela was inquiring about best practices for documenting security groups. (App. 17e) On about March 17, 2004 Black and Bbela exchange emails about drop instructions, (App. 17e) showing that Bbela was a step ahead of Black and Bbela was not being argumentative. While as Black seems to be looking for fault in Bbela even though Bbela's documentation was receiving praise from the tester Andy Ho ("Ho"). This is also evident in the company emails exchanges of March 17, 2004 between Black, Ho, and Bbela (App. 17e – 18e) in which Black finally apologizes to Bbela.

On Wednesday, March 31, 2004 Bbela sends email to Black "your assessment of brief work relationship" (App. 23e). On Thursday April 01, 2004 8:31 AM Black sends a draft of his expected response to Roberts and Black writes:

"Here's what I've written as my draft so far, please feel free to comment, to rein me in if necessary, etc" (App. 22e)

At 8:38 AM Roberts forwards Black's draft to Taunya Hilfrink ("Hilfrink") the Microsoft HR Manager, and Roberts writes;

"Below is the response the development lead is prepared to send back to Sabel. I would appreciate any feedback or changes that you might propose before Phil sends it to Sabel" (App. 21e – 22e)

At 8:54 AM Hilfrink replies to Roberts and writes;

"I made some changes below. Did Sabel actually refuse to create documentation, or did he just fail to deliver it? If he actually refused, then the language is okay, but otherwise it should be changed to reflect that he just didn't do it. Did anything go well?" (App. 21e)

At 11:02 AM Roberts forwards same email to Black and writes;

"Intro: I've added Scott to the cc: line as I've already given him this feedback." (App. 21e)

At 2:01 PM Black replies to Bbela's original email of March 31, 2004 and Black writes;

"Hi Sabel, I've added Scott to the CC line as I've already given him this feedback…" (App. 21e)

At 2:09 PM Bbela replies to Black's response email and Bbela writes;

"The MYD review assess that this was relatively a simple project. I was very confident I would deliver on time. Do you still believe it required such supervision from the get go?"

At 2:34 PM Black forwards Bbela email to Roberts and writes:
"This is where I probably start backing out. When you get a minute, could you ping me, so we can talk about this? Basically, if you're willing. I'd like for you to reply to his mail, to get this stuff off my plate. If it's more appropriate for me to gut up & deal with it, I can do that, but I really don't want to..." (App. 23e-24e)

At 3:53 Roberts replies to Black's email and writes:
"I completely agree that you should step out of this process now. Let me put together some communication along those lines, but you've provided the feedback he asked for." (App. 23e)

The above email exchange is very significant as it close to when the decision was made to transfer Black from Roberts's group to another group at Microsoft. It also shows how Black, Hilfrink, and Roberts conspired, covertly to setup Bbela for failure.

Although Bbela was key to reengineering Calypso, he was removed from supporting this application. Calypso programming support work continued in 2004 and this work was assigned to another non black employee.

In his declaration of October 18, 2007, Frank Schneider ("Schneider", "Frank") implies there was no longer any work budgeted for the Calypso project. (App. 24e-25e).

On about June 29, 2003, in the Microsoft Annual Performance Review of Bbela, Frank Schneider

writes the following about Bbela's expected assignments for 2004;

"...He contributed to the implementation of the standard finweb security model for data access as an interim measure until the arrival of WS2003 and delegation can be installed and engineering in the CALYPSO system. These methods are shared across numerous applications in CAIT arena...Sable's is working to grasp the MARS systems architecture, since this will be his primary development platform for the new fiscal year." (App. 26e – 27e)

Clearly according to Schneider, Microsoft had planned to have Bbela continue his work in Schneider's team for 2004 hence that contradicts Schneider's 2007 testimony.

On about June 22, 2004, in the Microsoft Annual Performance Review of Rich Stephenson ("Stephenson", "Rich"), Stephenson indicates he was performing Calypso work stating;

"....As the primary developer of Calypso I am the "go to" person." (App. 27e-28e)

Again, Stephenson writing is inconsistent with Schneider's sworn testimony that there was no more Calypso work in 2004.

In part, the Superior Court relied on testimony of Taunya Hilfrink ("Hilfrink", "Taunya"), Microsoft HR Manager. From about November, 2003 to July, 2004 Hilfrink meet with Bbela about two (2) times, however records show that she met or corresponded with Bbela's manager Roberts for at least once a week during that same period. The following

company emails excerpts shows how Hilfrink distorts and coaches Roberts on how to respond to his 1-on-1 meetings with Bbela of which she was not a part of.
On bout October 12, 2007 Hilfrink gave signed declaration for Microsoft in part writing;
"...Mr. Roberts invited me to attend some of his one-on-one conversations with Mr. Bbela." (App. 29e-30e)
On about October 24, 2003 Bbela inquires about a job position that opened at Microsoft that he was interested in. The announcement for this position was also sent to Hilfrink. (App. 31e-32e).
On about Thursday, November 27, 2003 Bbela explains to Roberts why he was reluctant to join his group (App. 33e).
On about February, 2004 Roberts and Hilfrink exchange emails about how they plan to manage Bbela's performance. (App. 34e).
Although Microsoft would like to explain this as a normal performance management practice, it is surprising that it occurred a few weeks after Bbela is assigned his first project. It does not mention anything about how to help Bbela either find a suitable position or offer him more training. Was Microsoft only paying lip service to their diversity efforts?
On Tuesday, February 03, 2004 Bbela sends email to Roberts to recap their 1-on-1 meeting of 1/30/2004. It must be noted that Hilfrink was not at this meeting. It can also be noted that there was no confrontational tone noted at this meeting. (App. 34e-35e)

On Monday, February 06, 2004 Roberts sends email to Hilfrink asking for assistance in drafting "Business Objectives" for Bbela and on Monday February 09, 2004 Hilfrink replies with her additions. (App. 34e)
On Tuesday, February 10, 2004 Bbela sends an email recap of his 1-on-1 meeting of 02/05/2004 with Roberts. It should be noted that Hilfrink was not present at this meeting. Bbela noted that Roberts has not yet responded to their 01-30-04 meeting recap. Bbela also expresses concern about his current position and asks for assistance from Roberts. On about February 10, 2004 Roberts and Hilfrink exchange emails about how to respond and edit Roberts's recap to 1:1 meeting of 1/30/2004. (App. 34e-35e).
Analysis of the above email exchanges clearly indicates that Roberts and Hilfrink had no interest in helping Bbela succeed at Microsoft. On the contrary the emails show how hard Bbela was working and how closely scrutinized he was being subjected to by Roberts and Hilfrink.
On Friday, February 27, 2004 Bbela sends email to Roberts, a recap of their 02/26/2004 1-on-1. It will be noted that Hilfrink was not at that meeting. It can also be noted that Bbela gives a well detailed list of accomplishments showing that his work was on track. The status report of projects marked Green includes MARS Planning Status Website. On about February 27, 2004 Roberts exchange emails with

Hilfrink to draft a response recap of 1:1 meeting of 02/26/2004. (App. 36e)

What is surprising about Hilfrink's analysis is that it contradicts the status report and in it she encourages Roberts to write that Bbela is not meeting expectations.

On about March 23, 2004 Bbela sends an email to Roberts to recap there meeting of March 22, 2004. It must be noted that Hilfrink was not at this meeting. (App. 37e-38e).

What is important to note about this meeting is that Bbela is on track with his projects. Bbela tells Scott of his Community Affairs work he was doing for First Place School and Seattle Central Community College. Bbela informs Scott that he is registered for C #training but Scott's concern is not that Bbela does not have time to attend the training, but that Microsoft may not be able to afford the $800 course fee.[7]

On about March 31, 2004 Bbela sent an email to Roberts and Hilfrink summarizing his work of March 04 – 08/2004 (App. 39e-40e). In this email Bbela

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[7] in RICCI et al v. DeSTEFANO et al. No. 07-1428 at para 5. (c) The City's race-based rejection of the test results cannot satisfy the strong-basis-in-evidence standard. Pp. 26-34.

(i) The racial adverse impact…was faced with a prima facie case of disparate impact liability… --essentially, a threshold showing of a significant statistical disparity, Connecticut v. Teal, 457 U. S. 440, 446, and nothing more--is far from a strong basis in evidence… that the City would have been liable under Title VII had it certified the test results. That is because the City could be liable for disparate-impact discrimination only if the exams at issue were not job related and consistent with business necessity…

quotes praise he received from other team members and also notes the challenges he had that weekend when his first project was due.
Company email exchanges of Bbela, Hilfrink and Roberts, from about May 04 – June 21, 2004 (App. 41e-45e) are troubling.[8] Bbela gives a positive progress on the work he was doing on the BAM project. While as Hilfrink and Roberts are more engaged in finding a less favorable responses to Bbela's performance.

Proceedings in Court of Appeals.
ASSIGNMENTS OF ERROR
ERROR IS ASSIGNED TO THE TRIAL COURT'S DECISION GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT WITH PREJUDICE.

The Appeal Court Judges findings in support of the Learned Chamber judge's on the motion for summary judgment are mostly subjective and circumstantial to be factual findings, and therefore error is not separately assigned. The Chambers judge ruled on judgments about intent which are best left for trial and are within the providence of the jury.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

[8] see RICI at p.8 para. c) (iv) Fear of litigation alone cannot justify the City's reliance on race to the detriment of individuals who passed the examinations and qualified for promotions. Discarding the test results was impermissible under Title VII,. .

Whether the Superior Court Chamber Judge properly concluded that Bbela was not subject to disparate treatment.
Whether the Superior Court learned judge properly concluded that Bbela was not setup to fail.
Whether the Superior Court judge properly concluded that there was not substantial circumstantial evidence to show pretext for unlawful discrimination.
Mr. JUSTICE John P. Erlick properly concluded that Bbela did not need the C# programming training and that his enrollment in C# training class was merely aspirational.
Whether the Superior Court learned judge properly concluded that Bbela was not similarly situated with other employees that received training he was denied.

The Supreme Court has explained that a "tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or decision causing a significant change in benefits." *Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998).* We have liberally defined the phrase "adverse employment action." *Sanchez v. Denver Pub. Sch., 164 F. 3d 527, 532 (10th Cir, 1998).* "Such actions are not simply limited to monetary losses in form of wages or benefits. Instead, we take a 'case-by-case approach.".

Plaintiff's claims are analyzed using a test first articulated in the *McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)*. Under that test, the plaintiff carries the initial burden of establishing a prima facie case. The burden may then shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection. The burden then shifts back to the plaintiff to show that the employer's stated reason is pretext. This burden-shifting analysis drops away entirely once the case goes to trial. *Kendrick v. Penske Transp. Servs. Inc., 220 F. 3d 1220, 1228 n.7 (10th Cir. 2000)*. At that point, it is the Plaintiff's burden to prove racial discrimination. See *Equal Employment Opportunity Comm'n v. Flasher Co., 986 F.2d 1312, 1316 (10th Cir. 1992)*. Essentially, at trial the plaintiff is attempting to prove pretext. "So long as the plaintiff has presented evidence of pretext (by demonstrating that the defendant's proffered non-discriminatory reason is unworthy of belief) upon which a jury could infer discriminatory motive, the case should go to trial. Judgments about intent are best left for trial and are within the providence of the jury." *Randle v. Aurora, 69 F. 3d 441, 453 (10th Cir. 1995)*.

Bbela successfully completed both of his projects assigned to him by his firing manager Roberts. Submitted evidence shows that Bbela used existing off-the-shelf software tools for the BAM project (App. 46e-47e). This solution was rejected by his firing manager Roberts because Roberts

preferred a custom solution that required C# programming that Bbela was denied training.

Bbela was already enrolled in the C# training class months before he joined Roberts's team. Submitted evidence on record shows that the firing manager Roberts denied Bbela permission to attend the training because Roberts said he did not have enough money in his budget to pay for the class. Evidence also shows that Bbela offered to pay for the $800 course fees (App. 48e-49e).

The defense incorrectly argued that the only position available to Bbela, after he completed Calypso, was in Roberts's FOIT Ops group, while evidence on record shows that Bbela was twice denied applying for Business Applications Developer positions that became available at Microsoft (App. 31e-32e, 50e-51e).

The Superior Court incorrectly underplayed the value of C# training to Microsoft's .NET Framework by dismissing provided evidence (App. 56e-58e). Petitioner argues that this conclusion is best left to the jury at trial.[9]

Submitted evidence on record shows that the firing manager Roberts obtained approval to fill two

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[9] Petitioners raise a statutory claim, under the disparate-treatment prohibition of Title VII, and a constitutional claim, under the Equal Protection Clause of the Fourteenth Amendment...See Atkins v. Parker, 472 U. S. 115, 123 (1985); Escambia County v. McMillan, 466 U. S. 48, 51 (1984) (per curiam) ("[N]ormally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case").

of his team's slots with applications developers because part of the team's support role would be to write code necessary to address applications performance issues and build support-related tools. These roles were initially filled by one senior development lead Phil Black and Bbela. Plaintiff argues Roberts must have known that C# programming was one of the required skill set to writing custom code. Petitioner argues that Roberts knew that Bbela had requested C# tramming; a necessary skill to write custom code. Yet with all this knowledge available to Roberts, Roberts denied Bbela C# training and he assigned the first two coding assignments to Bbela instead of assigning them to Phil Black. Plaintiff argues that Roberts's intent is questionable.

On May 22, 2009 and Pursuant to RAP 12.4(b) and instructions of Richard D. Johnson, Court Administrator/Clerk in a letter of May 4, 2009, Plaintiff, Bbela represented in Pro Se, submitted Motion to Reconsider and Alter Judgment. Bbela sought relief because there is a dispute in material fact presented in evidence and as set forth the following points were contended as matter of law or disputable facts:

> The question of whether Bbela's "MARS" and "BAM" software solutions were of "poor quality" and "were not delivered on time" are factual arguments better left to the Trier of Fact and require further analysis of Software Development Life Cycle process by expert

witnesses at trial. Microsoft had no obligation to implement these supposedly fault products. The question of whether .NET is a programming language and that Bbela's request for C# training was merely aspiration are factual arguments better left to Trier of Fact and require further analysis of Microsoft .NET Framework by expert witnesses at trial. The question of whether Bbela was similarly situated to Stephenson and Black is a factual argument. If viewed under different analysis there is enough material fact for Trier of Fact to conclude that the employer must have known that Bbela was indeed similarly situated and the intent for denying him C# training is discriminatory.

The question of whether Bbela had disciplinary problems during his almost five (5) years of employment at Microsoft is a factual argument not supported by presented evidence and is better left to the Trier of Fact at trial.

The Defendant's case overwhelmingly relies on subjective declarative opinions of employees who were not testers and potential users of "MARS" and "BAM", taken four years later after the events had occurred. In contrast, Plaintiff has presented overwhelming e-mails evidence from actual testers and users of "MARS" and "BAM" written at the time the events occurred.

> Close proximity of Bbela's participation in Microsoft's Diversity Activities and employer's adverse employment action should be reviewed with caution.

The question of whether Bbela's "MARS" and "BAM" software solutions were of "poor quality" and "were not delivered on time" are factual arguments better left to the Trier of Fact and require further analysis of Software Development Life Cycle process by expert witnesses at trial. Microsoft had no obligation to implement these supposedly fault products.

There is no evidence to show that Bbela's "MARS" project code delivered on March 8, 2004 was unsatisfactory and of poor quality, but merely an opinion stated by those who were not software testers. Although the defense claims that Bbela's code went through several corrections, they do not offer any evidence that someone else corrected Bbela's code.

To fully understand the process of producing a software product, one needs to take in account the Software Development Life Cycle process that was employed at Microsoft. Software production goes through four (4) distinct phases; 1) Code development and unit testing by developer, 2) code testing by test team, 3) User Acceptance Testing by users, and 4) software implementation by product support team.

Plaintiff hereby submitted to the court an Exhibit of Testing Methodologies to further clarify

this procedure and emphasize that the assertion that Bbela's "MARS" product was of poor quality and not delivered on time is a factual argument better left to the Trier of Fact at trial.

The "MARS" code was due for phase-1 completion end-of-business day Friday March 5, 2004 and in fact was dropped to the tester start of next business day Monday March 8, 2004 for phase-2. It can be argued that it is a normal practice for testers to advise the developer to adjust code to make corrections that may have been overlooked in phase-1. For the court to conclude that the e-mails dated 10 days later after phase-1 implementation is evidence of unsatisfactory work and untimely delivery is a factual argument that should be left to the Trier of Fact. Plaintiff argues that it is not proper for the court to put less weight to the e-mails evidence as provided *on page 8 of the opening brief and solely decide on subjective accessions of non-testers.*

In court proceedings and submissions, the Plaintiff tried to explain to the court what the "BAM" project was meant to do. In order to further clarify to the court, Plaintiff submitted an Exhibit (A Technical Overview of Microsoft Application Center 2000) abbreviated as AC2K. It can be argued that a Trier of Fact can establish that Microsoft has sold this product to millions of customers to do the job that Bbela configured it to do in the "BAM" project. It can also be argued that Microsoft has made significant profit selling this supposedly defective product as being suggested by the Defendant.

As with the "MARS" product, the "BAM " product had to go through the four (4) phases of Software Development Life Cycle process described above. Plaintiff provided company emails evidence on record (App. 46e-47e) that shows that "BAM" was delivered on time completing Phases 1, 2 and ready for Phase 3 and 4.

In a company e-mail of July 08, 2004 (App. 52e) when reviewing Phase 1 of the "BAM" solution, Ilya writes to Bbela "...This is reasonable...". Another company e-mail correspondence of that day (App. 53e) Bbela forwards e-mail to the tester Anitha Tallam with copies to Scott Roberts and Ilya stating "...fyi this email is coming from services now installed on \\wssqldev03" confirming that "BAM" had completed Phase-1.

In a company e-mail evidence on record (App. 54e) the tester Anitha Tallam writes "...I finished installing centralized database and those 3 windows services in test..." confirming that the "BAM" product had been successfully completed for Phase-2.

In a e-mail evidence on record (App. 54e), Cory Purkis, a potential user of "BAM" writes "...Hey Sabel, I'd like to have the TAIG Web Service monitored..." again confirming that Bbela's "BAM" solution was ready for Phase 3 implementation.

It is puzzling to the Plaintiff that the court did not consider such evidence that Bbela's "BAM" product was successful and put more weight to a few stated opinions of current Microsoft employees who are not software testers. Viewed in totality, Plaintiff

provided the Washington State courts over whelming evidence that Bbela's "BAM" product was successful.[10]

The question of whether .NET is a programming language and that Bbela's request for C# training was merely aspiration are factual arguments better left to Trier of Fact and require further analysis of Microsoft .NET Framework by expert witnesses at trial.

On page 16 of Brief of Respondent, submitted to the Appeals Court, the defense incorrectly instructed the court that .NET is a programming language stating "...In fact, Bbela had attended Microsoft training classes and had been provided with practical training in one of those three languages, .NET, in 2002..." The Defendant would like the court to believe this is one of the employer's legitimate reasons to deny Bbela C# training. .NET is an umbrella of different software development products and services and not a programming language like C# made of different languages for developing business or technical applications.

Plaintiff directed the Appeals Court to page 6 of its opening brief "...Because Bbela was performing exceptionally well with the reengineering project, in about April 2001, Microsoft offered to hire Bbela as

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[10] Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e et seq.., as well as, in some cases, practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (known as "disparate impact").

full time employee and Bbela accepted and joined the Microsoft Cost Center 17820-FTT ENG US team. The team's objective was to deliver Microsoft-compatible business applications..." and also as stated in Plaintiff's Reply Brief at 3, Bbela had knowledge of .NET languages to build business applications like he did with "Calypso" and enhanced these skills while reporting to Frank Schneider in 2003.

Bbela's request for C# training was to enhance his skills in other .NET languages like C# for building technical applications like "MARS" and "BAM". On pages 7 - 8 of Brief of Respondent submitted to the Appeals Court, the Defendant correctly states that Bbela resisted joining Scott Roberts's team. A logical inference can be made that lack of such technical programming skills like C# was the reason Bbela thought he was not a good fit for Roberts's team.

In further review of the Defendant's submissions to the courts, it is clear that, overwhelmingly the Defendant's evidence relies on subjective opinions of Microsoft current employees taken four years after the events in review occurred. In contrast, the Plaintiff has overwhelmingly relied on company e-mails evidence recorded at the time the events in review occurred.

Petitioner finds it surprising that at approximately the same time that Bbela become VP of Blacks at Microsoft (BAM), his manager chooses a project named Business Applications Monitoring "BAM" which happened to be the last project Bbela

was to do at Microsoft. Did Roberts know about the Diversity group called BAM and if not why? Did Roberts know that Bbela was VP of the Diversity group called BAM and if not why? These are but a few questions a Trier of Fact may want to know to establish some sense of what kind of mindset Roberts had towards minority employees at Microsoft. We know that Roberts reviewed a job posting distributed to all diversity groups at Microsoft including BAM. Bbela was confident that he would get consideration for this job but Roberts denied Bbela opportunity to apply (App. 50e-51e).

Plaintiff argued that summary judgment is inappropriate if the courts do not consider the entire record especially if the portion(s) the courts failed to read is material. Plaintiff has offered evidence that Purkis, Schneider, and Roberts were inconsistent in evaluations of Bbela's performance. This kind of evidence should raise suspicion of mendacity on part of Bbela's supervisors.

Plaintiff argued that the actions of the Superior Court violated Bbela's right to a jury trial as guaranteed by Article 1, Section 21 of Washington State Constitution. The Washington State Constitution provides that "The right of trial by jury shall remain inviolate..." *WASH. CONST., art 1 section 21.* In Washington, the right to a trial by jury "may not be impaired by either legislative or judicial action." *Wilson v. Olivetti North America, Inc., 85 Wash App. 804, 934 P.2d 1231,* citing. WASH. CONST., art 1 section 21.

REASONS FOR GRANTING THE WRIT

This court has recognized that the same set of facts can be the subject of both disparate treatment and disparate impact analysis. See *Int'l Bhd. Of Teamsters v. United States, 431 U.S. 324, 335-36 n.15 (1977)* (describing the disparate treatment and disparate impact theories, and noting that "[e]ither theory may, of course, be applied to a particular set of facts"); see also *Barbara T. Lindermann & Paul Grossman, Employment Discrimination Law 3-2 (Supp. 2008)* ("Courts...permit plaintiffs to assert both disparate treatment and disparate impact theories in a single case....").[11]

Disparate treatment is probably the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, or other protected characteristics. Proof of discriminatory motive is critical, and maybe inferred from the mere fact of differences in treatment. Moreover, if such a showing permits a reasonable Trier of Fact to infer that the employer's explanation is only a mistaken one in terms of facts, but a lie,

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[11] In RICCI et al. v. DeSTEFANO et al. No. 07-1428... at para. 4 The Court has considered cases similar to the present litigation, but in the context of the Fourteenth Amendment's Equal Protection Clause. Such cases can provide helpful guidance in this statutory context. See Watson v. Fort Worth Bank & Trust, 487 U. S. 977, 993. In those cases, the Court held that certain government actions to remedy past racial discrimination actions that are themselves based on race--are constitutional only where there is a "strong basis in evidence" that the remedial actions were necessary. Richmond v. J. A. Croson Co., 488 U. S. 469, 500; see also Wygant v. Jackson Bd. of Ed., 476 U. S. 267, 277.

that should provide even stronger evidence of discrimination.

In analyzing this case differently, we recommend that the court consider that (1) the defendant can be expected to treat similarly individuals consistently, and (2) the individuals being compared are truly similarly situated. In this case the defendant has attacked this point on the ground that more than one decision-maker was involved.

Generally, however, the issue is over the claim that the people being compared are similarly situated; because disparate treatment in this case should require a showing of a discriminatory motive, Microsoft must have known that Bbela, Stephenson, and Black were similarly situated. If Microsoft mistakenly thought they were different, its decision to treat them differently proves nothing.

Petitioner humbly asks the court to analyze denying Bbela C# training, and proving discrimination intent, by comparing Bbela, Stephenson, and Black to be applied with common sense rather that legal rigor.

First, determine whether Microsoft treated Bbela, Stephenson, and Black differently. Second, determine whether failure to treat them similarly is surprising. This should not require the plaintiff to eliminate every conceivable distinction between the three which might have resulted in differing treatments, but proving a set of facts which would lead a reasonable person to think that Roberts knew

enough about the situation to expect that the three individuals would receive the same training. Third, we have already established that the three (Bbela, Stephenson, and Black) can only be distinguished by race, the criterion we claim the defendant used. Viewed under this analysis we believe the defendant has no lawful explanation for its actions to be ruled as a matter of law.

Petitioner has offered evidence that show that actions referred to in this case occur within a short period of time, a strong inference arises that there was discriminatory motive. We believe that we have produced sufficient evidence of conscious wrongdoing by Microsoft and that a jury could find a discriminatory motive behind Bbela's termination, refusal of training, and seeking for another suitable job opportunity at Microsoft. The burden of persuasion at all times should rest with the Plaintiff.

The Question Presented is of Significant Importance to the Administration of Title VII Claims.

It can be said that there exists some abuse of summary Judgments by certain judges in overwhelmingly favoring employers; in an ever increasing sophisticated covert discrimination environment, this threatens to undermine Congress's broad remedial purpose in enacting Title VII. Congress enacted Title VII to eliminate systems that perpetuate workplace discrimination:

> The objective of Congress in the enactment of Title VII...was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices. *Griggs, 401 U.S. at 429-30.*

We granted certiorari, *528 U.S. 985 (1999)*, to resolve a conflict among the Courts of Appeals as whether a plaintiff's prima facie case of discrimination (as defined in *McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, (1973)*), combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, is adequate to sustain a finding of liability for intentional discrimination. Compare *Kline v. TVA, 128 F.3d 337 (6th Cir. 1997)* (prima facie case combined with sufficient evidence to disbelieve employer's explanation always creates jury issue of whether employer intentionally discriminated)...,with *Aka v. Washington Hospital Center, 156 F.3d 1284 (DC Cir. 1998)* (en banc) (plaintiffs discrediting of employer's explanation is entitled to considerable weight, such that plaintiff should not be routinely required to submit evidence over and above proof of pretext), and with *Fisher v.*

Vassar College, *114 F.3d 1332 (2nd Cir. 1997)* (en banc) (plaintiff must introduce sufficient evidence for jury to find both that employer's reason was false and that real reason was discrimination), cert. denied, *522 U.S. 1075 (1998)*...

CONCLUSION

For the forgoing reasons, the petition for writ of certiorari should be granted with cost.

ALL RESPECTFULLY SUBMITTED,

Sabel H. Bbela, Petitioner, in Pro Se
1130 Golf Club Road SE,
Apt #102
Lacey, WA 98503
(360) 456-0582

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION I

No. 621 37-8-I

MANDATE

King County

Superior Court No, 07-2-17940-2 SEA

SABEL H. BBELA, Appellant,

v.

MICROSOFT CORPORATION, Respondent.

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on May 4, 2009, became the decision terminating review of this court in the above entitled case on March 5, 2010. An order denying a motion for reconsideration was entered on July 15, 2009. An order denying a petition for review was entered in the Supreme Court on January 5, 2010. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

C: Sabel Bbela
Laurence Shapero, Rebecca Andrews
Hon. John Erlick

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle this 5th day of March, 2010.
/s/ RICHARD D. JOHNSON
RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals, State of Washington, Division I.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION I

No. 621 37-8-I
ORDER DENYING MOTION FOR RECONSIDERATION

SABEL H. BBELA, Appellant,

v.

MICROSOFT CORPORATION, Respondent.

Appellant, Sabel H. Bbela, having filed a motion for reconsideration of the opinion filed May 4, 2009; and the court having determined that said motion should be denied; Now, therefore, it is hereby
ORDERED that appellant's motion for reconsideration is denied.

DATED this 15TH day of July 2009.
FOR THE COURT:
/S/
Judge

SABEL H. BBELA, Appellant,

v.

MICROSOFT CORPORATION, Respondent.

No. 62137-8-I.

Court of Appeals of Washington, Division One.

Filed: May 4, 2009.

Counsel for Appellant(s), Sabel H Bbela (Appearing Pro Se), 1130 Golf Club Road Se, Apartment #102, Lacey, WA, 98503.

Counsel for Respondent(s), Laurence A Shapero, Riddell Williams PS, 1001 4th Ave Ste 4500, Seattle, WA, 98154-1065.

Rebecca L Andrews, Riddell Williams PS, 1001 4th Ave Ste 4500, Seattle, WA, 98154-1065.

UNPUBLISHED OPINION

AGID, J.

To establish a prima facie case of employment discrimination, an employee alleging termination due to age or race must, among other things, produce evidence that he or she was performing satisfactorily. Because Sabel Bbela failed to produce such evidence below, and, alternatively, because he produced no evidence that his employer's reasons for terminating him were a pretext for discrimination, we affirm the trial court's order dismissing his employment discrimination claim on summary judgment.

FACTS

Between April 2001 and July 2004, Bbela worked for Microsoft as a computer programmer. Microsoft originally assigned him to a project involving the reengineering of a computer program known as "Calypso." Although Bbela's work on Calypso was satisfactory, his supervisor, Cory Purkis, reported problems with Bbela's ability to take direction and criticism.

Purkis alleged that he "had many problems working with Mr. Bbela from the very beginning of our relationship." Bbela resisted supervision and his behavior at times verged on "outright insubordination." Purkis brought these issues to Bbela's attention in his evaluations.

In late 2003, as the Calpyso project was winding down, Microsoft reassigned Bbela to a newly formed group known as the "U.S. FOIT Ops" team. According to his new supervisor, Scott Roberts, Bbela was not happy with his reassignment from the outset and problems soon arose.

By early 2004, Roberts and his lead programmer, Phil Black, were encountering problems similar to those reported by Bbela's prior supervisor. Bbela responded poorly to criticism, was argumentative and confrontational, and resisted direction. While working on a project known as the "MARS" status page, Bbela resisted Black's repeated directions to use a specific tool for the project. Black alleged that "Bbela almost uniformly rejected my advice and direction. [He] seemed to form an opinion about how something should be done, and he would reject any contrary advice, even if it was from a senior level developer." When Roberts set a deadline for Bbela's work on the project, he missed the deadline and ultimately delivered "poor quality" work that required

unnecessary follow up and work and clarification.

In May 2004, Roberts told Bbela his job was in jeopardy and set specific expectations and deadlines for Bbela's current project, "BAM." On June 14, 2004, Bbela presented his BAM solution to the customer team. The team members roundly criticized the solution as failing to meet the requirements they had set. The solution "often reported unreliable information, the security on the tool had to be manually configured and maintained, . . . the proposed database was not scalable and could get corrupted[,] and the proposed database reset every month and thus could not hold sufficient data." According to Roberts, "Bbela refused to accept that his proposed solution would not work" and "was either unwilling or unable to incorporate the customer's requirements."

On June 22, 2004, Roberts informed Bbela by e-mail that his job was still in jeopardy and that he needed to make immediate and significant improvements in his performance. The e-mail set out specific expectations regarding Bbela's behavior and work product and a new deadline.

In July 2004, Bbela presented his final work product for BAM. The lead programmer on the project, Ilya Buzytsky, concluded that Bbela's solution was inadequate and "could not evolve into production quality code." Buzytsky explained that Bbela had "attempted to adapt an off-the-shelf application . . . to perform a job it had never been designed to do."

While working with Bbela, Buzytsky encountered the same resistance to direction that prior supervisors had experienced. Bbela "had his own pre-conceived idea of how he should carry out his tasks, and he refused to change

course in response to . . . coaching and direction." Buzytsky "spent a number of useless hours in meetings and over e-mail due to Mr. Bbela's inability or refusal to understand and respond to . . . coaching and direction." He "had never before worked with a developer who was so poor at taking direction."

On July 15, 2004, Roberts terminated Bbela's employment. According to Roberts, Bbela had not met the performance goals set for him, did not respectfully communicate with others, did not accept coaching, advice, or direction, and refused to accept responsibility for his projects.

In May 2007, Bbela filed this action for employment discrimination, intentional infliction of emotional distress, and intentional interference with a business relationship.

The complaint alleged that Bbela is "a man of African descent who is over 40 years of age," and that he was denied training, pay increases, and work opportunities that "other non-African, younger employees" received.

In November 2007, the court granted partial summary judgment, dismissing Bbela's claims for emotional distress and interference with a business relationship.

On January 25, 2008, the court dismissed Bbela's remaining claim for employment discrimination. Bbela moved for reconsideration, arguing in part that newly discovered evidence showed that Microsoft denied him training in an essential programming language called "C#." Bbela claimed Microsoft's denial of that training supported an inference that its stated reasons for termination were pretextual. The court granted the motion and authorized supplemental briefing on "why the failure to provide C# training to plaintiff Bbela was not discriminatory and why the C#

training was not necessary for Mr. Bbela's performance in the FOIT OPS Department."

In July 2008, the court again dismissed Bbela's discrimination claim. In its oral decision, the court ruled that Microsoft had carried its burden of demonstrating a nondiscriminatory reason for Bbela's termination, i.e., his "failure to perform to a satisfactory level." The court also concluded that Bbela had not carried his burden of producing evidence showing that Microsoft's reasons for terminating him and for denying him training were pretextual. Bbela appeals.

DECISION

Bbela's sole contention on appeal is that the trial court erred in dismissing his claim for employment discrimination based on his age and race.[1] We review a summary judgment order de novo, engaging in the same inquiry as the trial court and viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party.[2] Summary judgment is proper only if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.[3]

When, as in this case, an employee lacks direct evidence of discriminatory animus, courts evaluating summary judgment motions apply the federal McDonnell Douglas burden-shifting protocol.[4] The plaintiff must first demonstrate a prima facie case of discrimination, which creates a presumption that the employer discriminated.[5] In response, the employer must produce admissible evidence of a legitimate, nondiscriminatory reason for the adverse employment action.[6] If the employer meets this burden, the presumption is removed and the burden shifts back to the

plaintiff, who must then present evidence sufficient to disbelieve the employer's explanation.[7] A plaintiff carries the latter burden by showing that the employer's reasons have no basis in fact, are not what actually motivated the employer, or are insufficient to motivate an adverse employment decision.[8]

Microsoft contends Bbela failed to carry his initial burden of establishing a prima facie case of discrimination. We agree. To establish a prima facie case, an employee alleging termination due to age or race must, among other things, produce evidence that he or she was performing satisfactorily.[9] The employee must do more than express an opinion or make conclusory statements; there must be specific and material facts to support each element of his or her prima facie case.[10] Bbela did not meet that burden.

Although Bbela correctly points out that his work product on the Calypso project was satisfactory, his work on the projects immediately preceding his termination — i.e., MARS and BAM — was not. Microsoft's evidence showed that Bbela's work on MARS was untimely and of "poor quality." Bbela's claims to the contrary are not supported by the record. For example, in claiming that his work on the status page was timely, Bbela points to an e-mail indicating that the page would be in "production" a week before requested. While this evidence may demonstrate the timeliness of the MARS team's final product, it does not rebut evidence that Bebla's work on the project, i.e., the code, was untimely. Similarly, Bbela claims that certain e-mails show that the code he wrote for the status page was not "poor quality." But the e-mails are dated 10 days after Bbela initially presented his code. Thus, they do not rebut the evidence that the code Bbela delivered 10 days earlier was unsatisfactory and required additional work.

Bebla's claims regarding his performance on the BAM project are also not borne out by the record. As noted above, his superiors concluded that his work was not "of production level." Bbela claims his superiors were predisposed to reject his work because they favored a custom solution. The evidence he cites, however, shows that his superiors' preference was based on customer feedback and user requirements, not his superiors' predilections. Furthermore, the negative response to his BAM solution did not come solely from his superiors. Virtually everyone who reviewed the solution, including the customer team and the lead programmer, found it unsatisfactory.

Finally, and most importantly, Bbela points to no evidence showing that he had satisfactory interactions with his supervisors during any portion of his employment. His resistance to supervision was the most persistent and fundamental problem with his performance. The evidence demonstrating that problem was ample and essentially unrebutted.

In short, viewing the evidence in a light most favorable to Bbela, there is no genuine issue of fact as to whether he was performing satisfactorily at the time of his termination. He thus failed to establish a prima facie case.

Even if Bbela had established a prima facie case, we would still sustain the dismissal of his claims. Under the McDonnell Douglas protocol, the burden shifted back to Bbela when Microsoft offered legitimate, nondiscrimmatory reasons for terminating his employment. At that point, it was his burden to establish an evidentiary basis to disbelieve Microsoft's explanation. He did not do so.

Bbela questions his superiors' motives and speculates that they were setting him up to fail. But he provides no

evidentiary basis for these suspicions. He claims that Roberts and Human Resources Representation Taunya Hilfrink attempted to distort his performance evaluations, but the e-mails he cites merely document the company's ongoing efforts to deal with his shortcomings. Nothing in the e-mails even remotely suggests an attempt to distort his work record.

Bbela also claims that Microsoft's denial of his request for certain training provides a basis to question its explanation for his termination. Specifically, he alleges that Roberts denied him training in *C#* programming, that such training was necessary for him to succeed in his job, and that other "non-African" employees received *C#* training. He claims this evidence supports an inference that his superiors harbored discriminatory animus and/or were setting him up to fail. This claim is flawed in several respects.

As the superior court correctly noted, the employees who received the training Bbela sought were not similarly situated. Those employees not only worked for other teams, but their training was requested under different circumstances and approved by different supervisors. There also was no evidence rebutting Roberts' claim that he denied Bbela's training request because he "did not believe that Mr. Bbela had the time to take five days out of his schedule to attend this training." The record, in fact, lends credence to Roberts' explanation since Bbela had missed a deadline shortly before Roberts denied his training request.

Additionally, the record does not support Bbela's assertions that he needed *C#* training to succeed in his job or that Microsoft was aware that he needed it. Microsoft's evidence established that any one of three programming languages, including *C#*, could be used to create the custom solutions Bbela failed to produce and that Bbela did not need

proficiency in C# to succeed in his assignments. Bbela fails to demonstrate a genuine issue of fact on these points.[11]

And contrary to Bbela's assertions, nothing in the record supports an inference that Microsoft knew he lacked proficiency in all three languages. In fact, Bbela's evaluations suggested that he possessed such proficiency. When addressing his professional goals in his evaluations, Bbela mentioned a desire for additional language training. He generally expressed that desire, however, in terms of wanting to become "more proficient"[12] at those languages. This implied that he had already attained proficiency but simply wanted to improve upon it.

Bbela also claims he was denied job opportunities inside Microsoft that better suited his skills and that were available to other "non-African" employees. He contends these denials also support an inference of discriminatory animus. But once again, the record does not support his claim.

Bbela points to an April 2004 e-mail in which he requested permission to interview for a higher level programming job inside Microsoft. In his response, Roberts told Bbela he needed to focus "on bringing your performance up to a level that is meeting expectations for your current level and title. I cannot grant your permission to interview for other positions until that time." Nothing in the record suggests that Roberts' reasons for denying Bbela's request were pretextual. To the contrary, given Bbela's well-documented struggles in a lower level programming position, his admission below that he lacked proficiency in three essential programming languages, and his undisputed and persistent recalcitrance, the record strongly supports Roberts' explanation. Furthermore, Bbela fails to show that any of the employees allowed to transfer to other Microsoft

positions were similarly situated to him.

Finally, even if it could be said that Bbela made out a prima facie case of satisfactory performance regarding his work product and provided an evidentiary basis to disbelieve that basis for his termination, summary judgment was still proper. It is well settled that even when both parties meet their respective burdens, summary judgment may still be proper if no rational trier of fact could conclude that discrimination was a substantial factor in the employer's action.[13] "The sufficiency of the employee's evidence, even with a prima facie case and proof of pretext, must be gauged on numerous factors, including the strength of the employee's prima facie case, the probative value of the proof discrediting the employer's explanations, and any other admissible evidence supporting the employer's case."[14] Applying that rule here, we are convinced that even if Bbela could establish that his work product was adequate and that Microsoft's explanation for his termination was not credible in that respect, no rational trier of fact could conclude that Microsoft's decision to terminate him was discriminatory given the dearth of evidence suggesting pretext and the abundant and essentially uncontroverted evidence of his inability to follow the directions of his superiors.

Affirmed.

DWYER, J. and BECKER, J., Concur.

[1] Bbela's opening brief does not challenge the dismissal of his other causes of action. Although he attempts to challenge the dismissal of one of those claims for the first time in his reply brief, Microsoft has moved to strike the new issues raised in, and new declarations attached to, that brief. The motion is granted. See RAP 9.12 (record on review of summary judgment is limited to evidence before the trial

court); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (appellate court need not consider issues raised for the first time in reply brief).

[2] Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 501, 115 P.3d 262 (2005).

[3] CR 56(c); Hearst, 154 Wn.2d at 501.

[4] Hill v. BCTI Income Fund-I, 144 Wn.2d 172, 180-81, 23 P.3d 440 (2001) (adopting protocol from McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)).

[5] Id. at 181.

[6] Id.

[7] Id. at 182.

[8] Chen v. State, 86 Wn. App. 183, 190, 937 P.2d 612, review denied, 133 Wn.2d 1020 (1997).

[9] Id. at 189.

[10] Hiatt v. Walker Chevrolet Co., 120 Wn.2d 57, 66, 837 P.2d 618 (1992); Chen, 86 Wn. App. at 190.

[11] Contrary to Bbela's assertions, the trial court did not ignore his evidence indicating that former Microsoft Chairman Bill Gates considered certain programming languages, including C#, an important part of Microsoft's future. To the contrary, the court expressly considered the evidence but noted, correctly, that it was just "a general statement by the former chairman" that did not address

whether C# training was essential for Bbela to succeed.

[12] (Emphasis added.)

[13] Hill, 144 Wn.2d at 184-85 ("'For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred.'") (emphasis omitted) (quoting Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 148, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2060)).

[14] Griffith v. Schnitzer Steel Indus., Inc., 128 Wn. App. 438, 448, 115 P.3d 1065 (2005), review denied, 156 Wn.2d 1027 (2006).

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

(PROPOSED) ORDER *(partially)* GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S ACTION AT SUMMARY JUDGMENT

SABEL H. BBELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

THIS MATTER came before the Court on Defendant's Motion for Summary Judgment. The Court has considered the following documents:

1. Defendant's Motion *for* Summary Judgment;
2. Declaration of Scott Roberts, with exhibits attached thereto;
3. Declaration of Phil Black;
4. Declaration of Hya Buzytsky;
5. Declaration of Cory Purkis, with exhibits attached thereto;
6. Declaration of Frank Schneider;
7. Declaration of Taunya Hiltrink;
8. Declaration of Rebecca L. Andrews, with exhibits attached thereto;
9. Plaintiff's Opposition, if any, including any supporting declarations and exhibits;
10. Defendant's Reply in Support of its Motion for

Summary Judgment, including any supporting declarations and exhibits;

11. The files and pleadings in this matter; and

12. The arguments of counsel and Plaintiff.

The Court being fully advised of the premises and the record and files herein, FINDS: (*ORDERS*)

1. There are no genuine issues of material fact and thus (*Defendant's Summary judgment on*) Plaintiff's Washington Law Against Discrimination and Section 1981 claims should (*is continued to January 25, 2008 at 10:15 a.m.*) be dismissed as a matter of law for the following reasons (*pursuant to plaintiff's request for CR 56 continuance*)
    a. Because Plaintiff cannot produce evidence that he was performing his job satisfactorily and therefore cannot make out a prima facie case of discrimination under either the WLAD or Section 1981;
    b. Because Defendant has asserted a legitimate, non discriminatory reason for its decision to terminate Plaintiff's employment and Plaintiff cannot produce sufficient evidence to demonstrate that this reason was a pretext for discrimination.
2. Plaintiff's claim for the intentional infliction of emotional distress should be (*is*) dismissed (*with prejudice*) because Defendant's decision

~~to escort Plaintiff off the property upon termination of his employment cannot reasonably be construed as conduct that is "utterly intolerable in a civilized community".~~

3. Plaintiff's claim of intentional interference with a business expectancy should be (*is*) dismissed (*with prejudice*) because Defendant did not act improperly when it accurately informed a prospective employer that Bbela had a "no-rehire" status.

NOW THEREFORE, IT IS HEREBY ORDERED that Defendant Microsoft Corporation's Motion for Summary Judgment is GRANTED AS FOLLOW:

Plaintiff's ~~action~~ is (claims for outrage/intentional infliction of emotional distress and for ...) hereby dismissed ~~in its entirety~~, with prejudice.

DONE this 16th day November, 2007.

/s/ John P. Erlick
Honorable John P. Erlick

PRESENTED BY:
RIDDELL WILLIAMS P.S.
By: /s/ Rebecca L. Andrews
Laurence A. Shapero, WSBA No. 31301
Rebecca L. Andrews, WSBA No. 36035
Attorneys for Defendant

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

(PROPOSED) ORDER (*partially*) GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S ACTION AT SUMMARY JUDGMENT

SABEL H. BBELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

THIS MATTER came before the Court on Defendant's Motion for Summary Judgment. The Court has considered the following documents:

1. Defendant's Motion for Summary Judgment;
2. Declaration of Scott Roberts, with exhibits attached thereto;
3. Declaration of Phil Black;
4. Declaration of Ilya Buzytsky;
5. Declaration of Cory Purkis, with exhibits attached thereto;
6. Declaration of Frank Schneider;
7. Declaration of Taunya Hilfrink;
8. Declaration of Rebecca L. Andrews, with exhibits attached thereto;
9. Plaintiffs Motion for Continuance to Discovery or in the Alternative Dismissal or Continuance of Defendant's Summary Judgment Motion;
10. Exhibits in Support of Plaintiff's Motion for

Continuance of Defendants Summary Judgment Motion;
11. Defendant's Reply in Support of its Motion for Summary Judgment;
12. Declaration of Laurence A. Shapero in Support of Microsoft's Summary Judgment Reply Brief;
13. Plaintiffs First Supplemental Motion To Dismiss Defendant's Motion for Summary Judgment and Supporting Exhibits;
14. Declaration of Sabel H. Bbela in Support of Plaintiffs First Supplemental Motion to Dismiss Defendant's Motion for Summary Judgment, with exhibits attached thereto;
15. Microsoft's Supplemental Brief in Support of its Motion for Summary Judgment;
16. Declaration of Rebecca L. Andrews in Support of Microsoft's Supplemental Brief with exhibits attached thereto;
17. Declaration of Taunya Hiltrunk in Support of Microsoft's Supplemental Brief;
18. The files and pleadings in this matter; and
19. The arguments of counsel and Plaintiff.
The Court has previously dismissed Plaintiff's claim for intentional infliction
of emotional distress and for interference in a business expectancy. The Court
being fully advised of the premises and the record and files herein, FINDS:

1. There are no genuine issues of material fact and thus Plaintiffs

Washington Law Against Discrimination and Section 1981 claims should be dismissed as a matter of law for the following reasons:

a. ~~Because Plaintiff cannot produce evidence that he was performing his job satisfactory and therefore cannot make out a prima facie case of discrimination under either the WLAD or Section 1981;~~

b. ~~Because Defendant has asserted a legitimate, nondiscriminatory reason for its decision to terminate Plaintiffs employment and Plaintiff has not produced sufficient evidence to demonstrate that this reason was a pretext for discrimination.~~

NOW THEREFORE, IT IS HEREBY ORDERED that Defendant Microsoft Corporation's Motion for Summary Judgment is GRANTED AS FOLLOWS: Plaintiffs' action is hereby dismissed in its entirety, with prejudice.

DONE this 25th day January, 2008.

/s/ John P. Erlick
Honorable John P. Erlick

PRESENTED BY:
RIDDELL WILLIAMS P.S.

By: /s/ Laurence A. Shapero
Laurence A. Shapero, WSBA No. 31301
Rebecca L. Andrews, WSBA No. 36035
Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION

SABEL H. BBELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

THIS MATTER having come on before the undersigned Judge upon Plaintiffs Motion for Reconsideration of this Dourt's ruling on Defendant's Motion for Summary Judgment and the Court having considered the motion and the records and files herein, NOW, THEREFORE, it is hereby

ORDERED that The Court will take this matter under advisement. In the interim, defendant Microsoft is to supplement its answers to Plaintiffs Second Set of Interrogatories, Interrogatory No. 6, with respect to whether plaintiffs successors used C# in performing Mr. Bbela's duties after his termination. Defendant shall provide these supplemental responses within two weeks of the date of this

Order to plaintiff and to the Court. Additional briefing will be requested by the Court, as necessary.

DATED this 28th day February, 2008.

/s/ John P. Erlick

Honorable John P. Erlick

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

(PROPOSED) ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S ACTION AT SUMMARY JUDGMENT

Clerk's Action Required

SAREL H. BEELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

THIS MATTER came before the Court on the Court's request for supplemental briefing from the parties on Defendant's Motion for Summary Judgment. The Court has considered the following documents:

1. Defendant's Supplemental Brief In Support of Its Motion for Summary Judgment;
2. Supplemental Declaration of Scott Roberts, with exhibits attached thereto;
3. Supplemental Declaration of Phil Black;
4. Supplemental Declaration of Ilya Buzytsky;
5. Declaration of Carolynn Howsley, with exhibits attached thereto;
6. Supplemental Declaration of Laurence A. Shapero, with exhibits attached thereto;
7. Plaintiff's Supplemental Briefing;

8. Declarations and Exhibits in Support of Plaintiff's Supplemental Briefing, if any;
9. Defendant's Reply in Support of its Supplemental Briefing;
10. Declarations and Exhibits in Support of Defendant's Reply in Support of its Supplemental Briefing, if any;
11. The files and pleadings in this matter, including pleadings related to Defendant's Motion for Summary Judgment; and
12. The arguments of counsel and Plaintiff.

The Court has previously dismissed Plaintiff's claim for intentional infliction of emotional distress and for interference in a business expectancy. The Court being fully advised of the premises and the record and files herein, FINDS:

There are no genuine issues of material fact and thus Plaintiff's Washington Law Against Discrimination and Section 1981 claims should be dismissed as a matter of law.

NOW THEREFORE, IT IS HEREBY ORDERED that Defendant Microsoft Corporation's Motion for Summary Judgment is GRANTED AS FOLLOWS:

Plaintiff's action is hereby dismissed in its entirety, with prejudice.

DONE this 25th day January, 2008.

/s/ John P. Erlick
Honorable John P. Erlick

PRESENTED BY:
RIDDELL WILLIAMS P.S.
By: /s/ Laurence A. Shapero
Laurence A. Shapero, WSBA No. 31301
Rebecca L. Andrews, WSBA No. 36035
Attorneys for Defendant

THE SUPREME COURT
STATE OF WASHINGTON

January 15, 2010

Sabel H. Bbela
1130 Golf Club Road SE
Apartment #102
Lacey, WA 98503
4500

Laurence A. Shapero
Rebecca L. Andrews
Riddell Williams. PS
1001 4th Avenue, Suite

Seattle, WA 98154-1065

Re: Supreme Court No. 83503-9 – Sabel H. Bbela v. Microsoft Corporation
Court of Appeals No. 62137-8-I

Counsel and Mr. Bbela:

On this date a letter was received from the Petitioner, Mr. Bbela, in regards to further review in this matter. A copy of the letter is enclosed for the Respondent.
Review of this matter indicates that the petition for review was denied by a Department of the Court on January 5, 2010. A denial of a petition for review is not subject to further review by this Court or the Court of Appeals. The RULES OF APPELLATE PROCEDURE (RAP) provide that a party may file a motion for reconsideration only of "a decision

terminating review", see RAP 12.4(a). One element of "a decision terminating review" is that it must be an opinion, order or judgment of the appellate court filed after review is accepted, see RAP 12.3(a). A denial of a petition for review is an act declining to accept review. As such, the Court's decision on the petition for review is not subject to reconsideration.

It is noted that Mr. Bbela's letter purports to quote RAP 13.4(d). However, the provision that is quoted in the letter is actually from RAP 13.5(d), a rule that applies only to seeking review by the Supreme Court of an interlocutory decision of the Court of Appeals. Therefore, the provision that Mr. Bbela cites to is not applicable to the petition for review considered in his case.

Sincerely,

/s/ Susan L. Carlson
Susan L. Carlson
Supreme Court Deputy Clerk

THE SUPREME COURT OF WASHINGTON

NO. 83503-9

ORDER

C/A NO. 62137-8-I

SABELH. BBELA, Petitioner,

v.

MICROSOFT CORPORATION, Respondent.

Department I of the Court, composed of Chief Justice Alexander and Justices C. Johnson Sanders, Owens and J. Johnson, considered at its January 5,2010, Motion Calendar, whether review should be granted pursuant to RAP 13,4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 5th day of January, 2010.

For the Court

/s/ Gerry L. Alexander

CHIEF JUSTICE

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

DECLARATION OF SCOTT ROBERTS IN SUPPORT OF MICROSOFT'S MOTION FOR SUMMARY JUDGMENT

SABEL H. BBELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

I, Scott Roberts, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated below.
2. In the fall of 2003, I was employed by Microsoft Corporation to serve as manager in Microsoft's U.S. Finance and Operations Information Technology ("FOIT") group. My specific assignment was to manage the U.S. FOIT operations team. This was my first opportunity to manage an organization, and I was excited about my new role. My team was created during a reorganization, so in addition the existing operations team that I inherited, a few new team members came to me from different groups. As a result, I was working

with my direct reports for the first time.

3. ...

SIGNED AT *Redmond* on this *18th* day October, 2007.

/s/ Scott Roberts
Scott Roberts

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07 2 17940 2 SEA

SUPPLEMENTAL DECLARATION OF SCOTT ROBERTS

SABEL H. BBELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

I, Scott Roberts, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated below.
2. During my tenure in 2003 and 2004 as manager of Microsoft's U.S. FOIT Ops team, there was never any time at which I had established or enforced a requirement or preference that the team's applications developers use any particular computer programming language such as C#. Because I do not have an applications development background, I do not have any significant knowledge of any computer programming language, or the advantages or disadvantages (if any) of using any specific language in any specific set of

circumstances...I did not know what language my applications developers were using.

3. ...

SIGNED AT *Redmond* on this *30th* day June, 2008 in King County, Washington

/s/ Scott Roberts
Scott Roberts

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

DECLARATION OF ILYA BUZYTSKY IN SUPPORT OF MICROSOFT'S MOTION FOR SUMMARY JUDGMENT

SABEL H. BBELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

I, Ilya Buzytsky, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated below.

2. I have been employed by Microsoft Corporation since April 2001. In approximately May of 2004 I replaced Phil Black as lead applications developer on the U.S. Finance and Operations Information Technology Operations ("U.S. FOIT Ops") team. The team was managed at the time by Scott Roberts, who was my immediate supervisor. I also got a chance to review and discuss development projects with Sabel

Bbela, the other applications developer on Scott Roberts' team.

3 ...

SIGNED AT *Microsoft Redmond* on this *18th* day October, 2007 in King County, Washington.

/s/ Ilya Buzytsky
Ilya Buzytsky

Application: MS People Perspective: Job History Last Refreshed: Friday, October 26, 2007 12:26:04 PM
Last Run Time: 00:00:14
Effective From Date: (ALL) Personnel Number: (Equal To) 123012,109820,91103 Email: (ALL) Full Name: (ALL) Cost Center: (ALL) Staffing Type Category: (ALL) Person Status: (ALL) termination Date: (ALL) Most Recent Hire Date: (ALL) Reports To Full *Name*: (ALL)
Effective From Date Personnel Number Full Name Cost Center Staffing Type C Person Status Reports To Full Name
11/22/2002 91103 Stephenson, Richard G. 17820-FIT ENG US Regular Active Buzytsky, Ilya P.
:L 1/22/2002 109820 Pohuja, Mukesh H. 17820-FIT ENG US Regular Active Akbar, Shahed P.
11/22/2002 123012 Bbela, Sabel H. 17820-FIT ENG US *Regular* Active Buzytsky, Ilya P.

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

DECLARATION OF PHIL BLACK IN SUPPORT OF MICROSOFT'S MOTION FOR SUMMARY JUDGMENT

SABEL H. BBELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

I, Phil Black, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated below.
2. I have been employed by Microsoft Corporation since July 25, 1995. In late 2003, as part of reorganization at Microsoft, I became the lead applications developer on an operations support team in Microsoft's U.S. Financial Operations and Information Technology ("FOIT") team. That newly created U.S. 25 FOIT Operations (or "U.S. FOIT Ops") team was being managed by Scott Roberts, who became my immediate supervisor. As the lead applications developer on the FOIT Ops team, I had some responsibility for coaching

and
directing the only other applications developer on that team. That other developer was Sabel Bbela.

3. Mr. Bbela was a Level 59 applications developer. A Level 59 developer is a fairly low level developer who is expected to be able to complete fairly simple and/or structured applications development (or computer programming) assignments. The position to which Mr. Bbela was assigned on the us. FOIT Ops team was primarily an applications development role. Based on my experience as an applications developer, a competent Level 59 applications developer should have been able to succeed in this position. unfortunately, Mr. Bbela was not a particularly productive applications developer when I worked with him on the U.S. FOIT Ops team. He did very little work, and the quality of his work was poor.

4. ...

SIGNED AT 2:15 pm on this 17th day October, 2007.

/s/ Phil Black
Phil Black

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

SUPPLEMENTAL DECLARATION OF PHIL BLACK

SABELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

I, Phil Black, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated below.
2. In late 2003 and early 2004 I served as the applications development lead on the U.S. FOIT Ops. team that was being managed by Scott Roberts, who was my immediate supervisor. In approximately April 2004, I accepted a transfer to another department outside of U.S. FOIT Ops. After my transfer, Ilya Ruzynsky became the applications development lead for Scott Roberts' U.S. FOIT Ops. team.
3. Starting in approximately May 2004, my new assignment involved work with web service applications. My new skip-level manager, Martina Hemstra, required all of the new

> members of that team to attend a web services training class. In the final weeks before my transfer became effective, Scott Roberts approved my absence from work to attend the web services training[1] that I had been instructed to attend by my new manager...

SIGNED AT *Redmond, WA* on this *20th* day June, 2008 in King County, Washington.

/s/ Phil Black
Phil Black

[1] This is the same C# course that Roberts denied Black to take.

From: Sabel Bhela Sent: Tuesday, February 24, 2004 8:32 AM
To: Phil Black
Subject: RE: Delegation
Very good point. I will let start testing with
MarsStaD
:sb
From: Phil Black
Sent: Tuesday, February 24, 2004 8:19 AM
To: Sabel Bhela
Subject: RE: Delegation
I am not planning on touching the SG rename until we know that we are going to be able to successfully use delegation to access the NTBatch shares. If we cannot do that, then we would probably have to use an account to access them, and if that's the case, there's no point in renaming the security groups. In my opinion, the access of file shares via delegation is the lone technical issue that needs to be resolved, so I would think it would be somewhat important to get figured out early.
Phil
From: Sabel Bhela
Sent: Tuesday, February 24, 2004 8:15 AM
To: Phil Black
Subject: RE: Delegation
As I indicated earlier, the delegation work for SQL Server is working fine.
I will be working on this item at a lower priority.
Lets try to get the SG naming conversion settled.
I see that MarsStaD has been accepted

Although I still would have preferred MarsMOMD or equivalent, I am okay with this one.
-sb

From: Phil Black
Sent: Tuesday, February 24, 2004 8:05 AM
To: Sabel Ebeda
Subject: RE: Delegation
So you did a step in code to make constrained delegation work for SQL Server, correct? Do you think that perhaps an equivalent step is necessary to access a server share via the file system? Is your file access working now? If not, then would suggest trying to find someone who has already done this. A couple of folks who might know would be Andy or Rachel Hull, who did a bunch of this research for MSPeople- don't know if either has experience with delegation to a share vs. SQLServer, but if I were stuck at this point, I'd be trying to find someone that had been down the path, or perhaps find an appropriate alias for asking what might be preventing your share access from working properly. Maybe see if you can get it working on a non NTBatch share path first event, in case the issue has to do with NTBatch permissions rather than, delegation
Phil

From: Sabel Bhela
Sent: Monday, February 23, 2004 2:41 PM

To: Phil Black
Subject: RE: Delegation
I do have that and the authentication to SQL
> mehacandra works just fine
From: Phil Black
Sent: Monday, February 23, 2004 12:33 PM
To: Sabel Bhela
Subject: Delegation
Hi,
So one thing to check:
In web.config, in the authentication section, I think
that <identity impersonate="true"/> must be present.
Does the
website have that?
So far, the best source I've found is something Andy
sent me:
http://autweb/autwebtech/admin/tasks/delegation/trus
ted.htm
However, early on it mentions implementing 'the IIS
6 process Model with impersonation in the NET
Web.config file where encryption is automatic.'
Phil

From: Sabel Bhela
Sent: Tuesday, March 02, 2004 8:05 AM
To: Sally King; Phil Black
Cc: Frank Schneider; Scott A. Roberts
Subject: RE: Progress on MARS Status Page
A working copy has been setup onto
http://elwin/MarsPlanStatus which I demonstrated to Scott.
Scott has a legitimate concern with performance which is just as slow as the current version and I shall be looking into it.
Phil and Frank brought a good concern about using group access to shares and suggested using machine names.
After a brief brainstorming session Phil & I decided against using machine names.
This leaves us with using directory security anonymous accounts or application pools access to shares and delegation to SQL.
Delegation to SQL is working.
sb
From: Sally King
Sent: Monday, March 01, 2004 5:30 PM
To: Phil Black; Sabel Bhela
Subject: Progress on MARS Status Page
Hi,
Can you guys give me an update on where you are with the MARS Status Page? Issues? Roadblocks? Successes? ETA?
Thanks!
Sally

From: Frank Schneider [fraschi@microsoft.com]
Sent: Tuesday, March 02, 2004 10:28 AM
To: Phil Black; Sabel Bbela; Sally King
Cc: Scott A. Roberts
Subject: RE: Progress on MARS Status Page
hi phil and sabel,
1 seems out of our control. that is the way the ntbatch shares are set up. there is nothing we can do about the account names.
2 mixing the app pool access and delegation needs to be investigated, the sql access should allow the delegation based on the connection criteria to the sql server, the file access may be controlled by the app pool account. i cannot answer that. other possibility is to set folder permissions on the shares you are trying to read. make them explicit to the user group of course if they are ntbatch shares that will not work as in #1. i haven't seen how the app pool accounts show up in scale, but i do see all the services that run under non-local accounts show up in every scale audit.
frank
From: Phil Black
Sent: Tuesday, March 02, 2004 8:42 AM
To: Sabel Bbela; Sally King
Cc: Frank Schneider; Scott A. Roberts
Subject: RE: Progress on MARS Status Page
Couple of things that deserve clarification:
1) The desired path for accessing a share from the website is to use the machine account, which keeps us from having to use special accounts where we

must maintain passwords, etc. However, the share we are trying to connect to is an NTBatch share. Access to those shares are maintained via the NTBatch UI. This is an NTBatch group requirement. The way it works is that only accounts that appear in the NTBatch UI as users have access to the share (this is done via some sort of automatic process). In addition, the NTBatch UI only accepts user account names up to 8 characters, so we can't really use machine names, which are not limited to 8 characters. Therefore, we are going to have to use a network account, probably the mars refresher account, unless there's a better one.
2) Since we cannot use the machine account we will create an application pool for the application, and to use the above-mentioned account to run it under. Sabel is concerned that doing this will cause the constrained delegation to the SQL Servers to quit working properly. He will be testing this to make sure it works okay. We will not consider using anonymous access using a network account, unless there is some compelling reason for that, as it is farther away from our security direction.
From: Sally King
Sent: Monday, March 08, 2004 6:11 PM
To: Jon Dammand; Mark Obermayer; Kathy Farrell
Cc: Phil Black; Scott A. Roberts; Sabel Bbela; Kevin Dinsmore; Cheryl Wen
Subject: Status of MARS Planning Status Page
Hi,
A quick update on where we are with the work on the

MARS Planning Status Page. Based upon the scaled back requirements that Jon provided, Sabel has dropped the new code to our Tier 3 Test. Andy Ho It uses enhanced security and parameterized server name declaration, both of which are best practices we were hoping to implement. I'll give you an update as soon after the first Test pass.
Our goal is to have it in production a week before you requested. We are shooting for UAT on 4/1 and Production on 4/6. I'll keep you posted on progress.
Thanks
Sally
From: Sabel Bhela
Sent: Friday, March 12, 2004 9:29 AM
To: Shahed Parvez Akbar
Cc: Frank Schneider; Rachel Bull; Phil Black
Subject: RE: MARS User SC
I am only trying to respond to the attached thread. I think Phil's intention is to have it documented in the install DOC for migration purposes.
-sb
From: Phil Black
Sent: Wednesday, March 17, 2004 3:56 PM
To: Sabel Bhela; Andy Ho (MSIT)
Subject: RE: Insufficient Drop Documentation – PCR 2346
Oh, my mistake. I apologize. I just saw the most recent one, and the instruction is now the first one. Sorry for the big randomization.
From: Sabel Bhela
Sent: Wednesday, March 17, 2004 2:41 PM

To: Phil Black; Andy Ho
Subject: RE: Insufficient Drop Documentation - PCR 2346
But that is exactly what I have in the current document.
From: Phil Black
Sent: Wednesday, March 17, 2004 2:35 PM
To: Andy Ho
Cc: Sabel Bbela
Subject: RE: Insufficient Drop Documentation - PCR 2346
Now you're getting somewhere. A similar instruction must exist in your installation instructions. In addition, if it needs to be run on multiple servers, then you also need to specify that.

From: Sabel Bbela
Sent: Wednesday, March 17, 2004 2:32 PM
To: Andy Ho
Cc: Phil Black
Subject: RE: Insufficient Drop Documentation - PCR 2346
Check this recent sample from MARS.
From: Andy Ho
Sent: Wednesday, March 17, 2004 2:25 PM
To: Sabel Bbela
Cc: Phil Black
Subject: RE: Insufficient Drop Documentation - PCR 2346
This is one that accounts for custom sql configuration changes for each environment.

From: Taunya Hilfrink
Sent: Monday, June 21, 2004 10:25 AM
To: Scott A. Roberts
Subject: RE: For your review
Thank you, that makes sense! ☺
dont know that it isn't enough, just wanted to make sure that everything is captured. Often managers leave the day-to-day stuff off and then the employee ignores that to do what is written down and we have a new issue. ☺
From: Scott A. Roberts
Sent: Monday, June 21, 2004 10:23 AM
To: Taunya Hilfrink
Subject: RE: For your review
The first deliverable is an architectural diagram. The 2nd is a documented physical design. One's a high-level picture depicting the approach and the other is more a more detailed document of how the approach will be implemented
This is all he is responsible for at this time. Do you sense that it is not enough?
From: Taunya Hilfrink
Sent: Monday, June 21, 2004 10:20 AM
To: Scott A. Roberts
Subject: RE: For your review
What is the difference between deliverable # 1 & # 2?
This looks good. I made a few changes, but nothing major. Is this all he is responsible for, or are there other day to day activities that should be reflected?

From: Scott A. Roberts
Sent: Monday, June 21, 2004 10:06 AM
To: Tamya Hiltrink
Subject: For your review
Sabel,
I'm writing this e mail to confirm our 1-1 discussion today. We talked about the fact that, there are several areas of your performance where you are not meeting my expectations for your job function and level. As you know, we initially started talking about these concerns back in February. At that time we established clear goals and objectives for you. Since that time I have made it clear to you on numerous occasions that you have not been meeting my expectations. You are currently tracking to a 2.5 rating in the September review.
Please understand that your job is in jeopardy and you need to make immediate and significant improvement in the areas listed below it is critical to your continued employment at Microsoft. I am willing to work closely with you for the next 4 weeks and assist you were I can in improving and meeting your goals. However please understand that I retain the right to terminate you at anytime if it is clear that things are not working out. With your successful improvements, at the end of these 4 weeks I will back off and begin to manage you as I do all successful employees. You will then be responsible for sustaining your performance. If you fall below the bar at any time after this I retain the right to take disciplinary action, up to and including termination.

From: Scott A. Roberts
Sent: Thursday, April 01, 2004 11:02 AM
To: Phil Black
Subject: FW: your assessment of brief work relationship
Intro: I've added Scott to the cc: line as I've already given him this feedback
From: Tammya Hulfrink
Sent: Thursday, April 01, 2004 8:54 AM
To: Scott A. Roberts
Subject: RE: your assessment of brief work relationship
I made some changes below. Did Sabel actually refuse to create design documentation, or did he just fail to deliver it? If he actually refused, then the language is okay, but otherwise it should be changed to reflect that he just didn't do it.
Did anything go well?
From: Scott A. Roberts
Sent: Thursday, April 01, 2004 8:38 AM
To: Tammya Hulfrink
Subject: FW: your assessment of brief work relationship
Importance: High
Below is the response the development lead is prepared to send back to Sabel. I would appreciate any feedback or changes that you might propose before Phil sends it to Sabel.

From: Phil Black
Sent: Thursday, April 01, 2004 8:31 AM
To: Scott A. Roberts
Subject: FW: your assessment of brief work relationship
Importance: High
Here's what I've written as my draft so far, please feel free to comment, to rem me in if necessary, etc
Hi Sabel,
This information to some extent is simply a re iteration of the feedback I've provided to Scott as Dev Lead for the
Ops Tier III team which he has probably covered already in your mid year review. That said 'about roles/duties'
My job as dev lead is to provide technical direction, help define deliverables, ensure quality of code & releases
etc. On this project, my duties were basically the same as above...

Phil

From: Sabel Bbela
Sent: Wednesday, March 31, 2004 1:41 PM
To: Phil Black
Subject: your assesment of brief work relationship
Importance: High
I need your feedback on your view of our interaction specifically on the MARS Plan Status page.
Please indicate your interpretation of reporting roles and your specific duties for this project.
I need this information by Friday April 2nd 2004 for my meeting with HR.
Please indicate if you decline to respond.
Thanks
-sb
From: Scott A. Roberts
Sent: Thursday, April 01, 2004 3:53 PM
To: Phil Black
Subject: RE: your assesment of brief work relationship
I completely agree that you should step out of this process now. Let me put together some communication along those lines, but you've provided the feedback he asked for,
From: Phil Black
Sent: Thursday, April 01, 2004 2:34 PM
To: Scott A. Roberts
Subject: FW: your assesment of brief work relationship
This is where I probably start backing out. When you get a minute, could you ping me, so we can talk about this?

Basically, if you're willing, I'd like for you to reply to his mail, to get this stuff off my plate. If it's more appropriate
for me to gut up & deal with it, I can do that, but I really don't want to... Thanks, Phil

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

DECLARATION OF FRANK SCHNEIDER IN SUPPORT OF MICROSOFT'S MOTION FOR SUMMARY JUDGMENT

SABEL H. BBELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

I, Frank Schneider, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated below.
2. I have been employed by Microsoft Corporation since 1999. In 2002 and early 2003, I was working as a development lead for Microsoft...As a result, all of the FOIT applications developers (or computer

programmers) reported to me, including the three developers who had been working at the time on the Calypso reengineering project: Sabel Bbela, Rich...

3. ...
4. ...
5. In the fall of 2003 the FOIT group went through another reorganization. Such reorganizations are a common fact of life at Microsoft, which is constantly changing to adapt to new business circumstances. At about the same time as this larger reorganization was taking place, the Calypso reengineering project on which Mr. Bbela had been working completed its multi- year assignment to re-write the Calpyso financial reporting application. Because the Calypso reengineering project had been completed, my development team no longer had any budgeted resources to direct to this project. This meant I had to find new assignments for each of the former Calypso applications developers that were reporting to me at the time...

SIGNED AT *Redmond* on this *18th* day October, 2007 in King County, Washington

/s/ Francis T. Schneider
Francis T. Schneider

Microsoft Annual Performance Review *2003 Standard Review Form*

Reviewer: Frank Schneider Dept. Name: US-CorpAcct IT-Reporting Date: June 29,2003

Sabel has worked on different CAIT projects during this fiscal year. He completed some projects for CALYPSO prior to moving as a direct to me, transitioned to MARS for the Fixed Asset and Planning releases, and then returned to work on CALYPSO fixed asset releases. The MARS projects were primarily MSReports metadata and underlying Sql supporting views, This was a departure from the transactional and interactive reporting work he has done on CALYPSO. He picked up this activity with moderate coaching from the project lead fairly quickly.

The largest percentage of his time for this fiscal year was spent on CALYPSO. His work on the CCS reports, the schedule reports and on portions of the IBI removal and Fixed Asset reporting service were key to CALYPSO's successful operation in the fiscal year. The new services that CALYPSO is now employing are the integral to the future of interactive reporting and the elimination of antique query tools that access SAP data, particularly the AMT. He contributed to the implementation of the standard finweb security model for data access as an interim measure until the arrival of WS2003 and delegation can be installed and engineered in the CALYPSO system. These methods are shared across numerous applications in the CAIT arena.

Sable's work on the MARS fixed asset metadata for MSReports was completed, passing all the know testing issues, but was delayed implementation until SAP upgrades and new extract programs are installed. This is schedule for the FY04Q1 timeframe. Sable's is working to grasp the MARS systems architecture, since this will be his primary development platform for the new fiscal year. He still needs ramp up time to work efficiently in this new arena where development environments are maintained by developers and the...

Microsoft Annual Performance Review
Name: Rich Stephenson, Title: Application Developer, Employee ID#: 91103
Reviewer: Kelly Pranghofer
Date: June 22, 2004
Part *1*: FY04 Performance Review
Met individually with development manager (Frank Schneider) and production manager (Scott Roberts) to get buy off on the Business user Rosetta process. Scott commented that I was on the right track and had put a lot of thought in to the process... I do not compartmentalize my work to strictly development work. I strive to make the entire team successful. When Operations had trouble installing Rosetta in PPE and production was there to get them though it As the primary developer of Calypso I am the "go to" person for production support when the Operations folks When Calypso scheduled reports failed I

stepped up, did the troubleshooting, and got the problem resolved. When Calypso reports that have Kanji fail I figure out why. Solving these issues required tremendous patience, persistence and attention to detail...Classroom training I've taken this fiscal year: Advanced ASP.NET, Debugging NET Applications Career Power, Looking at Vulnerabilities. and Developing NET Applications for Windows using C#[2]

---

[2] Rich Stephenson joined Bbela on the Calypso Project on about 2000. It should be noted that this is the same programming training denied to Bbela. Bbela borrowed Rich's C# training manual for self training.

Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 07-2-17940-2 SEA

DECLARATION OF TAUNYA HILFRINK IN SUPPORT OF MICROSOFT'S MOTION FOR SUMMARY JUDGMENT

SABEL H. BBELA, Plaintiff,

v.

MICROSOFT CORPORATION, Defendant.

I, Taunya Hilfrink, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated below.
2. I have been employed by Microsoft Corporation since October 2000 as a Human Resources representative. For much of my career at Microsoft, I was responsible for managing human resources matters for Microsoft's US. Finance and Operations Information Technology (or "FOIT") team.
3. From approximately October 2003 until July 2004, I was involved in efforts by Scott Roberts to manage job performance and other workplace issues involving Sabel Bbela. At the timed Scott Roberts was managing a am of

employees providing operational support as part of the U.S. FOIT team. Mr. Bbela was one of the employees who reported to Mr. Roberts.

4. ...

5. I encouraged Mr. Roberts to engage in one-to-one conversations with Mr. Bbela and to establish a paper record of their communications and Mr. Roberts' efforts to manage Mr. Bbela's job performance. Mr. Roberts invited me to attend some of his one-to-one conversations with Mr. Bbela...

SIGNED AT Redmond, Washington on this 12 day October, 2007 in King County, Washington.

/s/ Taunya Hilfrink
Taunya Hilfrink

From: Sabel Bbela
Sent: Friday, October 24, 2003 9:01 AM
To: Eric Nickerson
Subject: RE: [3]Strategic Career Opportunity
Thanks.
From: Eric Nickerson
Sent: Friday, October 24, 2003 8:59 AM
To: Sabel Bbela
Subject: RE: Strategic Career Opportunity
Good morning Sabel — yes they all do.
I will be spending all day Monday and Tuesday meeting with individuals interested in one of these opportunities. 'll set you up for some time to talk about RoB on Monday.
Thanks,
Eric Nickerson
From: Sabel Bbela
Sent: Friday, October 24, 2003 7:40 AM
To: Eric Nickerson
Subject: FW: Strategic Career Opportunity
Hi Eric,
Do these positions report thru to you? I am interested to find out more about the ROB position.
Thanks, Sabel
From: B. J. Moore
Sent: Thursday, October 23, 2003 5:03 PM
To: AdminIT
Cc: Dianne O'Brien; Robert Uhlaner; Taylor Hawes; Scott Di Valerio; Mike Adams; Taunya Hilfrink

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[3] Bbela's experience in Calypso Finance reporting development prepared him well for this position

Subject: Strategic Career Opportunity

As many of you have been keeping current with John Connors Finance 2.0 updates — you have probably noticed how Finance 2.0 has touched various SUITs within Admin IT. One area in particular has been the significant growth and the overall business focus in the CSPA (Corporate Strategic Planning and Analysis) space. Over the past 12 months the team has launched two vi global applications (MS Rev Plan in FY03 and Rhythm of the Business in FY04) while supporting the traditional Planning cycle. IT has really stepped up to these challenges and has delivered by being agile and very creative with our alternative delivery models... As a result — we will be adding 4 positions to the CSPA team with the intention of Admin IT resources filling these positions. The rolls are as follows:

- Development Lead (Rythym of the Business)
- Test Lead (Rythym of the Business)
- Developer (Planning Tools)
- Tester (Planning Tools)

These rolls will need to be filled asap with the expectation that those joining the CSPA team will stay through the FY05 Planning cycle (which means through June 04). At the end of FY04 those individuals will be given the option of moving back to their current teams or are welcome to continue on the CSPA team...

From: Sabel Bbela
Sent: Thursday, November 27, 2003 1:08 PM
To: Scott A. Roberts
Cc: Joel Kneisley; Kelly Pranghofer; Frank Schneider; Venkata Machavaram; Sabel Bbela
Subject: RE: Recap of our Discussion

Hi Scott,

Thank you as well for meeting with you. Perhaps what is missing in your summarization is the reasons why I am reluctant to take the position. Ever since Kelly introduced this position to me, I have discussed it with several members of the Development team, including some who have supported Operations group. Some have shown interest in the position had it been offered to them. I believe this role requires more of Technical Development role to streamline back-end processes in the Operations Group.

My track record has demonstrated my strength in Applications Support Development. I have demonstrated this in the successful conversion of the Calypso App and in the last several MARS projects I have successfully completed. I also like to clarify your position that I either take this position or you will assist me to look for another position outside CAIT. I mentioned to you that this poses a challenge because of my current work VISA status. I welcome your offer of assistance and look forward to working with you in making my work experience here at MS a fulfillment.

-sb

From: Taunya Hilfrink
Sent: Monday, February 09, 2004 6:57 PM
To: Scott A, Roberts
Subject: RE: Business Objectives
It sounds like you are expecting him to come back to you with SMART goals (measurable, specific, etc). If this is the case, then this is a god start. I added a bit of clarity to your closing line. Please let me know if you need anything else, ☺
From: Scott A. Roberts
Sent: Friday, February 06, 2004 3:56 PM
To: Taunya Hilfrink
Subject: Business Objectives
Hi Taunya,
Before I spend a whole lot of time crafting this mail, wanted to check with you as to whether I'm on the right track, Any feedback you could provide would be most appreciated.
Hey Sabel,
Following are the high-level business objectives for you for the remainder of this fiscal year: ...

From: Sabel Bbela
Sent: Tuesday, February 03, 2004 9:02 AM
To: Scott A. Roberts
Subject: 1-on-1 discussion notes, please adjust where I amybe off!
Mid-year review
As per our transition review. I need to confirm that I will keep my FPOS.
Scott indicated that he wishes me to have new FPOS

and he will be working with me in drafting them.
[scotarob] I want you to draft your FPOs based on the objectives I have sent you. These are due to me by XXX. Once they are drafted, I will help you refine them to ensure that they are SMART, and that they are inline with the group's business objectives.
I indicated that I wish to keep the same FPOS I set at the beginning of the year. [scotarob] True; however, I indicated that your existing FPOs are very light and not very measurable, which is why I need you to draft a new set.
We discussed about career development objectives. I indicated that I was interested in developing Apps Development skills and that may conflict with my new duties. Scott indicated that the career development skill set do not necessarily have to match current duties. [scotarob] From the perspective of stretch goals, this is true. It is important to note that in addition to any stretch goals you define you are first and foremost expected to meet your business objectives
I indicated that I am looking forward to the mid year career development discussion with Scott.
My plan for setting up MOM/2004 Dev
The objective is to setup a MOM/2004 environment for developing and testing applications level monitoring agents.
I informed Scott that I discussed this option with Mark Pohto of EAS Platform Services.

From: Taunya Hilfrink
Sent: Friday, February 27, 2004 11:17AM
To: Scott A. Roberts
Subject: RE: my feedback from yesterday's meeting
added a little bit, but it looks pretty good. It does not say that he is not meeting your expectations Given our conversation, I recommend you cover that in your next 1:1 and then include it in the summary. I also have a template that you can use if that would be helpful.
From: Scott A. Roberts
Sent: Friday, February 27, 2004 10:48 AM
To: Taunya Hilfrink
Subject: RE: my feedback from yesterday's meeting
Comments are inline..
Please let me know if you have any feedback, suggestions, etc
From: Sabel Bbela
Sent: Friday, February 27, 2004 8:29 AM
To: Scott A. Roberts
Subject: my feedback from yesterday's meeting

From: Sabel Bbela
Sent: Tuesday, March 23, 2004 5:21 PM
To: Scott A. Roberts
Subject: feedback to meeting of 03/22/04
Completed MARS Planning Status Page and dropped to test. This release includes parameterized server names.
Informed Scott that enhancements were made to mstall instructions. Andy's input of Finweb instructions was very helpful.
On call support call for 03/04/04 to 03/11/04. Logged at least 14 incidents.
Informed Scott of the unusual number of Job failures that happed. I informed him that we need proper documentation of each job so as to pro-actively support job streams. The job failures seem to be mostly vulnerable to prevailing environment, Job failures cannot be easily predicted.
Met with Tony Throop of HRIT. We discussed about their implementation of Exception Management Code
block for ASP NET applications. Found out that HRIT's level of application monitoring is limited to newer NET systems only.
Informed Scott that HRIT does not monitor non NET applications. They use exception management block. I have being studying on this.
I informed Scott that almost 90% of our applications are non NET,
Scott instructed me to work on a proof-of-concept monitoring on a non NET application.

Coded scripts for loading the following tables of 1st Place DB.
Family goals
Release of Information
Medical Coverage
Clothing inventory categories
Social Emotional Competence categories and items.
I informed Scott that most of the work on this project was done after hours. I do have a completed DB ready
for test site install.
Most Important Things You Are Focusing On Right Now
MARS Planning Status Page SG setup instructions.
Application level monitoring for MOM integration.
Learn more about Platform Architecture Guidance (http://pag/) for best practices as being adopted by HRIT
for their application level monitoring.
Check with Andy/Venu for event togging as implemented for the Autopub tool
C# Trainmg and Toast masters enrollment
informed Scott that registered for a day training and am on the waiting list for April 13/04. Scott is concerned about the cost of the course and he will check his budget...

From: Sabel Bbela
Sent: Wednesday, March 31, 2004 9:01 AM
To: Scott A. Roberts
Cc: Taunya Hilfrink
Subject: FW: mrp job explnhir on cpmarsmaster ERROR at 17:40
This feedback from a Tier III analyst during my very first on call assignment.
From: Andy Ho
Sent: Sunday, March 07, 2004 12:03 AM
To: Sabel Bbela
Subject: RE: mrp job expinhir on cpmarsmaster ERROR at 17:40
Sabel,
Very impressive summary I think we all should be doing something to what you have.
- Andy
From: Sabel Bbela
Sent: Sat 3/6/2004 6:47 PM
To: crr Production Support
Cc: crr Notification; FOff Ops Team; SAP and NTBatch Operations; 'a scottk'
Subject: RE: mrp job explnhir on cpmarsmaster ERROR at 17:40
1) Job failed on a BCP error in step FunctionHierarchyPlanBWB.
2) Verified FunctionHierarchyPlanBWB.dat exists on \\ntbsrc02\mrpprod\dat\bwb\export\preplan with a date stamp of 3/5/2004 5:41pm.
3) Logged onto \\cpmarsmaster\ and confirmed access to share in #2.
4) Checked the checkpoint file on \\ntbsrc02\mrpprod\wrk\checkpoint-files\explnhir and confirmed step in #1

5) Log file shows constraints passed.
6) Ops file did not show silent errors.
7) Resubmitted job with /0
8) Job completed normally.
-sb
Original Message
From: Sabel Bbela
Sent: Saturday, March 06, 2004 6:02 PM
To: SAP and NTBatch Operations; 'a-scottk'
Cc: CAIT Notification; FOrT Ops Team
Subject: RE: mm job expmhir on cprnarsmaster ERROR at 17:40
I am now looking at this job you may clear the alert.
-sb

From: Taunya Hflfrink
Sent: Monday, May 10, 2004 1:57 PM
To: Scott A. Roberts
Subject: RE: 1:1 Recap
I added your name below to indicate clearly which comments were added by you. It is a little thing, but it helps add clarity. I also added some recommendations in blue. Please ensure that my recommendations don't change the meaning of the conversation. ☺
From: Scott A. Roberts
Sent: Friday, May 07, 2004 2:12 PM
To: Taunya Hilfrink
Subject: RE: 1:1 Recap
Can you provide feedback?
Thank you for sending your summary of our 1:1 Please note that my expectation is that you will send it to me within 2 business days and this one was late. I have added additional clarification in line below where I thought you had not captured our entire conversation. Please let me know if you have any questions.
From: Sabel Bbela
Sent: Tuesday, May 04, 2004 1:19 PM
To: Scott A. Roberts
Subject: RE: 1:1 Recap
Things You Want To Discuss w/Me
Scott introduced a summary of the current requirements. Mark gave us a demo of MOM/2005 Ops console.
The functionality and console reporting of

MOM/2005 seem to meet our requirements in 1) Monitor Service and 2) Reporting app, C) Ops Analyst UI.
Mark emphasized the need for developing custom Management Packs to meet our specific needs. I noted that while HRIT may need to track code defects monitoring, functional state response maybe more important in our Management Packs,
I noted that requirement 2b) General User UI, maybe too specific only to our needs and beyond MOM:2005. Specific example would he to test response from a URL that includes input parameters.
MOM2005 may require at most 10 seconds response while our applications may take a longer time.
In summary, we can accomplish requirements in 1) Monitoring Service by working with MOM/2005 team in defining and building custom Management Packs. Requirements 2) Reporting app, a) Global requirements and c) Ops Analyst UI can also be derived from MOM/2005 configuration. FOIT Ops may need to develop application to meet requirement 2) Reporting app, b) General User UI.

From: Taunya Hilfrink
Sent: Friday, June 18, 2004 8:13 AM
To: Scott A. Roberts
Subject: FW: One on One 06-17-04.doc
Attachments: RE: for Project review of 06-14-04; RE: Design Document Risk Factors; Input from our 1:1
I made two same changes....

From: Scott A. Roberts
Sent: Thursday, June 17, 2004 3:58 PM
To: Taunya Hilirink
Subject: RE: One on One 06-17-04.doc
Thank you for sending this summary within the agreed upon time, have added additional clarification in line below where I thought you had not captured our enhre conversation Please let me know if you have any questions.
From: Sabel Bbela
Sent: Thursday, June 17, 2004 2:04 PM
To: Scott A, Roberts
Cc: Sabel Bbela
Subject: RE: One on One 06-17-04,doc
The following is my feedback to our meeting;
Scott suggested we skip over reviewing each of the risk factors...
From: Taunya Hilfrink
Sent: Monday, June 21! 2004 10:20 AM
To: Scott A. Roberts
Subject: RE: For your review
What is the difference between deliverable # 1 & # 2?
This looks good. I made a few changes, but nothing major. Is this all he is responsible for! or are there other day-to —day activities that should be reflected?
From: Scott A. Roberts
Sent: Monday, June 21, 2004 10:06 AM
To: Taunya Hilfrink
Subject: For your review
Sabel,
I'm writing this e-mail to confirm our 1:1 discussion

today. ...You are currently tracking to a 2.5 rating in the September review...
From: Taunya Hilfrink
Sent: Monday, June 21, 2004 10:25 AM
To: Scott A. Roberts
Subject: RE: For your review
Thank you, that makes sense! ☺
don't know that it isn't enough, just wanted to make sure that everything is captured. Often managers leave the day to day stuff off and then the employee ignores that to do what is written down and we have a new issue. ☹
From: Scott A. Roberts
Sent: Monday, June 21, 2004 10:23 AM
To: Taunya Hilfrink
Subject: RE: For your review
The first deliverable is an architectural diagram. The 2 is a documented physical design. One's a high-level picture depicting the approach and the other is more a more detailed document of how the approach will be implemented.
This is all he is responsible for at this time. Do you sense that it is not enough?
From: Taunya Hilfrink
Sent: Monday, June 21, 2004 10:20 AM
To: Scott A. Roberts
Subject: RE: For your review
What is the difference between deliverable # 1 & # 2?
This looks good. I made a few changes, but nothing major. Is this all he is responsible for, or are there other day-to –day activities that should be reflected?

From: Scott A. Roberts
Sent: Monday, June 21, 2004 10:06 AM
To: Taunya Hilfrink
Subject: For your review
Sabel,
I'm writing this e-mail to confirm our 1:1 discussion today... If you fall below the bar at any time after this I retain the right to take disciplinary action, up to and including termination.

From: Sabel Bbela
Sent: Thursday, July 08, 2004 2:48 PM
To: Anitha Tallam (volt)
Cc: Scott A. Roberts; Ilya Buzytsky; Sabel Bbela
Subject: FW: BWAM - Critical Condition Alert for The Following Web site
(s) On Server: WSHSDEV06
...fyi this email is coming from services now install on \\wssqldev03.
-----Original Message-----
From: webhelp@microsoft.com
[mailto:webhelp@rnicrosoft.com]
Sent: Thursday, July 08, 2004 2:44 PM
To: Sabel Bbela
Subject: SWAM — Critical Condition Alert for The Following web Site (s) On Server: WSHSDEV06
Health Monitor - http://fintestmono4/Calypso/xMLReports/opexbylo/OpexayloS.asp
Health Monito[4]r - http://findev/Calypso/xMLReports/Opexbylo/OpexSyPCR.asp
Health Monitor - http://fintes-tmono4/Calypso/xMLReports/fadetail/fadetailS.asp
Health Monitor - http://fintestmon04/Calypso/xMLReports/Trandx/TrandxS.asp
Health Monitor —

[4] Health Monitor is a Microsoft product that Bbela used. Information about this product is available on the web. http://technet.microsoft.com/en-us/library/bb687450.aspx

http://fintestmono3/Calypso/xMLReports/OpexbylO/o
pexsyPCR.asp (2) Health Monitor
- http://fintestMono3/Calypso/ Health Monitor -
http://fintestmono4/Calypso/ Health Monitor -
http://fi ndev/Calypso/XMLReports/Trandx/Trandxs
asp (2) Health Monitor -
http://fintestMono3/Calypso/ Health Monitor -
http://findev/Calypso/xMLReports/TrandX/TrandxS.a
sp
(2) Health Monitor -
http://findev/Calypso/xMLReports/opexbylo/OpexByP
CR. asp
Health Monitor - http://fintestmono4/Calypso/ Health
Monitor -
http : //fi
ntestmono4/Calypso/xMLReports/Trandx/Trandxs
asp
Health Monitor -
http://fintestmonO3/Calypso/xMLReports/OpexbylO/o
pexSyPCR.asp (2) Health Monitor
- http://findev/calypso/XMLReports

From: Sabel Bbela
Sent: Friday, April 09,2004 12:49 PM
To: Business Learning & Dev
Cc: Scoff A. Roberts; Taunya Hilfrink; Sheri Bandy
Subject: RE: BLD Training Reminder: Developing Microsoft NET Applications for Windows (Visual C# NET): Tue 13 Apr-Fri 16 Apr 2004
Thanks.
There was a misunderstanding as I was waiting for feedback from my manager.
I apologize for the inconvenience.
-sb
From: Business Learning & Dev
Sent: Friday, April 09, 2004 12:47 PM
To: Sabel Bbela
Cc: Scott A. Roberts; Taunya Hilfrink; Sheri Bandy
Subject: RE: BLD Training Reminder: Developing Microsoft .NET Applications for Windows (Visual C# .NET): Tue 13 Apr
- Fri 16 Apr 2004
You will not be charged, but the question was asked why you did not decline when asked to confirm last Thursday/Friday.
Thank you,
Sheri Bandy
Program Coordinator
Business Learning & Development Group
-----Original Message-----
From: Sabel Bbela
Sent: Thursday, April 08, 2004 12:25 PM
To: Business Learning and Development

Cc: Scott A. Roberts; Taunya Hilt rink
Subject: RE: BLD Training Reminder: Developing Microsoft .NET Applications for Windows (Visual C# .NET): Tue
13 Apr - Fri 16 Apr 2004
Please advise if there is a way I can withdraw without incurring the charges or if the charges can be billed to me directiy.
Thanks,
:sb
From: Business Learning and Development
Sent: Thursday, April 08, 2004 3:14 AM
To: Sabel Bbela
Subject: BLO Training Reminder: Developing Microsoft NET Applications for Windows (Visual C# .NET): Tue 13
Apr - Fri 16 Apr 2004
We would like to remind you that you are scheduled for the following training:
Developing Microsoft .NET Applications for Windows (Visual C# .NET): Tue
13 Apr - Fri 16 Apr 2004
The fee for this course is: $800.00
Thank you,
Business Learning and Development
Please note that if there is a course *fee,* it is our posted policy that a student's cost center will be charged *if* the registration is not cancelled within the timeframe listed below.
If you do not plan to attend, please cancel at least 15 day(s) before this course starts.

From: Scott A. Roberts
Sent: Friday, April 09, 2004 4:36 PM
To: Sabel Bbela
Subject: RE: [5]Senior SQL Database Developer Opportunity!
Sabel,
Your focus now needs to be on bringing your performance up to a level that is meeting expectations for your current level and title. I cannot grant your permission to interview for other positions until that time,
From: Sabel Bbela
Sent: Tuesday, April 06, 2004 1:30 PM
To: Scott A. Roberts
Subject: FW: Senior SQL Database Developer Opportunity!
Importance: High
Here is one job that would really get my juices flowing unfortunately it is looking for minimum level 61 Do you think I would have a chance at it?
:sb
From: Gina Miner
Sent: Tuesday, April 06, 2004 1:17 PM
To: DAC Arabs At MS; DAC Brazilians at Microsoft; Chime General Discussion; DAC MS Hispanics Worldwide; DAC HongKong Employees in MS Comm; DAC Indian Organization; DAC MS Koreans Worldwide; DAC MS Native Americans; DAC

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[5] With his success in Calypso reengineering project and the experience he received in 2003 in Frank Schneider's team, Bbela believed he was well suited for this position.

Pakistanis at Microsoft; DAC Persian at Microsoft; DAC Romanians at Microsoft; DAC Singaporeans at Microsoft; DAC Contact for Gay and Lesbian Group; DAC Taiwanese Microsoft Employees; DAC Turks at Microsoft - Worldwide; DAC Job Postings ONLY; DAC - German Speakers at Microsoft Corp.; DAC Blacks at MS - Worldwide; DAC Filipinos at Microsoft; DAC- Hellenes at Microsoft; DAC MS Single Parents
Cc: DAC Diversity Advisory Council
Subject: Senior SQL Database Developer Opportunity!
Importance: High
Do you know someone who is passionate about databases and wants to stay at the forefront of technological development? Want a real challenge *and* an opportunity to significantly impact the quality of the Windows platform? Excited about developing highly visible enterprise databases? Want to work with a fun dedicated group of people in a stable organization that believes in work/life balance? Look no further!...

From: Sabel Bbela
Sent: Thursday, July 08, 2004 3:31 PM
To: Ilya Buzytsky
Cc: Scott A. Roberts; Anitha Tallam (Volt)
Subject: RE: Log Uptime Service added to the design doc.

Please drop by I can explain the processing flow chart.

Non response will be treated as an error and logged against last successful entry.

-sb

From: Ilya Buzytsky
Sent: Thursday, July 08, 2004 3:23 PM
To: Sabel Bbela
Cc: Scott A. Roberts; Anitha Tallam (Volt)
Subject: RE: Log Uptime Service added to the design doc.

Sabel,

This is reasonable. Could you clarify how you populate the UpTimeLog table? Does it happen every polling cycle for each server? If so, what happens if the site does now respond? Maybe it would make sense to create an

additional "flag" for weather the attempt to collect the "Up Time" was successful...

Thanks - Ilya

From: Sabel Bbela
Sent: Thursday, July 08, 2004 3:04 PM
To: Ilya Buzytsky
Cc: Scott A. Roberts; Anitha Tallam (Volt); Sabel Bbela
Subject: Log Uptime Service added to the design doc.
Per our earlier conversation, note the changes made for addition of the above service.
This was mentioned in a thread between Scott and I in response to Anitha's test cases feedback.
-sb
From: Sabel Bbela
Sent: Thursday, July 08, 2004 2:48 PM
To: Anitha Tallam (volt)
Cc: Scott A. Roberts; Ilya Buzytsky; sabel Bbela
Subject: FW: [6]BWAM - Critical Condition Alert for The Following Web site
(s) On Server: W5IISDEV06
....fyi this email is coming from services now install on \\wssqldev03.
-----original Message-----
From: webhelp@microsoft.com
[mailto:webhelp@rnicrosoft.com]
Sent: Thursday, July 08, 2004 2:44 PM
To: Sabel Bbela
Subject: BWAM — Critical Condition Alert for The Following web Site (s) On Server: WSIISDEV06
Health Monitor - http://fintestmono4/Calypso...

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[6] BWAM (Business Web Application Monitoring) a k.a BAM (Business Application Monitoring), the system developed by Bbela as his last assignment at Microsoft.

From: Anitha Tallam (Volt)
Sent: Friday, July 09, 2004 5:10 PM
To: Sabel Bbela
Cc: Scott A. Roberts; Ilya Buzytsky
Subject: Finished installation
Hi Sabel
I finished installing centralized database and those 3 windows services in test, I used Redmond\MRFRSHR as domain account that has admin access.
Thanks
Anitha
From: Sabel Bbela
Sent: Tuesday, July 13, 2004 1:22 PM
To: Cory Purkis
Subject: RE: Application Families for BWAM Tool
will pass on the information to our Ops Leads. I will be opening PCRs for each application in our Operations folder of PS. Each PCR will keep track of the URLs we will be implementing and I encourage you guide us for your particular applications.
Thanks.
From: Cory Purkis
Sent: Tuesday, July 13, 2004 11:40 AM
To: Sabel Bbela
Subject: RE: Application Families for BWAM Tool
Hey Sabel,
I'd like to have the TAIG Web Service monitored. Rosetta and the cubes would be lower priority. Please let me know if you need any specific info to move forward on it.

Thanks
From: Sabel Bbela
Sent: Tuesday, July 13, 2004 8:41 AM
To: Kathy Farrell; Ann Jewett; Cory Purkis; Salvador Segura; Jason Howell; Rob Parnell; Brian Anderson
Cc: FOIT Ops Team
Subject: FW: Application Families for BWAM Tool
Importance: High
Hi All —
Our team is in the process of implementing a Business Web Applications Monitoring (BWAM) Tool. Sally King has provided us a preliminary list of the applications we wish to start with.
It is important to us that we identify the most critical web sites you would like to have monitored.
As this is not a complete list, we would like you to assist us identify your preferences.
I apologize for the short notice, but we prefer to have your most prompt feedback.
From: Sally King
Sent: Monday, July 12, 2004 5:53 PM
To: Sabel Bbela
Cc: FOIT Ops Team
Subject: Application Families for BWAM Tool
Hi Sabel, Here are the Application Families and Applications that I currently have captured in my Release Schedule. This is not a complete list, but it represents what we discussed. You should probably check MSApps for a complete list.

Microsoft

Bill Gates to Underscore Commitment to Computer Science And Academia at OOPSLA 2002

Microsoft's Chief Software Architect Will Unveil Programming Language Innovations In C++ and C# and Demonstrate Microsoft Research Contributions in Security and Reliability

SEATTLE, Nov. 8, 2002 — Today at OOPSLA 2002, the 17th Annual ACM Conference on Object-Oriented Programming, Systems, Languages and Applications, Microsoft Corp. Chairman and Chief Software Architect Bill Gates will unveil innovations in key developer technologies as part of Microsoft's commitment to academia and computer science.

In his keynote address before an audience of university faculty, students and developers, Gates will announce the road map for the Microsoft® Visual C# (TM) NET and Visual C++® NET programming languages, two core technologies supported within Visual Studio® NET, the company's flagship development tool. Gates also will demonstrate an innovative internal tool developed by Microsoft Research, code-named "Scout," that enables Microsoft's development teams to locate, prioritize and address product vulnerabilities. "Scout" marks a significant advancement toward Microsoft's goal of providing a safe, private and reliable computing experience for its customers.

"Today's announcements are about demonstrating our unwavering commitment to the advancement of computer science," Gates said. "Our goal is to provide

the academic and developer communities with the tools, standards support and trustworthy technology they need to succeed."

Looking Into the Future of Programming Languages

Building on Microsoft's long history of delivering innovative and practical programming languages, from Visual Basic® to C#, Gates will take the wraps off future enhancements to Visual C++ .NET and Visual C# NET. Microsoft will demonstrate progress in its long term commitment to the C++ programming language and standards conformance by releasing a new version of Visual C++ NET that will be 98 percent conformant to the public International Organization for Standardization (ISO) C++ standard. For the first time, Windows® developers can use advanced ISO-defined C++ language features while also compiling and using modern C++ libraries,

"Microsoft started out as a developer-tools company, and we recognize the incredible importance of great tools that support a range of programming languages," Gates said, "Today we are delighted to announce an even deeper commitment to C++, in the form of greater ISO standard conformity and an emphasis on building standard libraries,"

Gates also will disclose additional features in the next version of Visual C++ NET that enable developers to use existing skills to deliver more robust and secure projects in less time, without sacrificing the power that has traditionally accompanied the C++ programming language, These

features include performance improvements for floating point operations, increased productivity for Windows Form-based development, and improved security for more trustworthy computing.
In addition, Microsoft will propose specifications for new features in *C#*, a modern and innovative language designed by Microsoft and ratified by ECMA as a public standard...